A Philologicall COMMENTARY:

OR,

An Illustration of the most Obvious and Useful words in the

LAVV.

With their Distinctions and divers Acceptations, as they are found as well in Reports Antient and Modern, as in Records, and Memorials never Printed: Usefull for all Young Students of the Law.

Thomas

Arist. 3. Metaph. Cap 4.

Τὸ γὰρ μὴ ἓν τι σημαίνειν οὐδὲν σημαίνειν ἐστί.

Leigh

The second Edition Reviewed and Inlarged.

By *Edward Leigh* Gentleman, sometimes of the *Middle Temple.*

LONDON,

Printed by *A. M.* for *Charles Adams*, and are to be sold at his Shop at the Sign of the Talbot near St *Dustans* Church in Fleetstreet. 1658.

To the right Honourable
and his Honoured Kinſman
JOHN LISLE *Eſq;*
One of the Lords Comiſſioners of
the Great Seal of England.

My LORD,

IF Conſanguinity and long acquaintance, and Converſe together in three famous Societies, may be a ſufficient

ground for the Dedication of a Book to one; I hope, it will neither ſeem incongruous to others, nor be judged preſumption by you, that I make choice of a Lawyer, and among them, of your ſelf (one of ſuch eminent place in reference to the Laws of the Land) to Patronize a Treatiſe of our Municipall Laws. I wiſh the VVork were as

as well worthy of your acceptance, as the application of my ſelf to you is proper. *Lex humana* (ſaith Aquinas) *eſt quoddam dictamen rationis, quo diriguntur humani actus.* A humane Law is a certain dictate of reaſon by which humane acts are directed: The Law of this Land is held to be the beſt every way for this Nation, it being the Birthright (as one of 1.2. Q. 97. Art. 1.

the great Sages of the Law saith) and the most antient and best Inheritance that the Subjects of this Realm have; for by it they enjoy not only their Inheritance and Goods, in peace and quietness, but their Life and their most dear Country in safety. Among other principles of the Law are divers generall and particular Customes, *Cum enim aliquid*

Cooks preface to the 5 Rep. and on Lit.

quid multoties fit (ſaith the Schoolman) *videtur ex deliberato judicio provenire, & ſecundum hoc conſuetudo & habet vim legis, & legem abolet, & eſt legum interpretatrix.* For when any thing is done very often, it ſeems to proceed from deliberate Judgment, and according to this Cuſtom both hath the force of a Law, and aboliſheth a Law, and is the interpretatrix

Aquinas loco prius citato A.I.3.

terpreter of Laws, Your Office is to moderate the rigour of the Law, to weigh what is generally meet, and for the person, Your Court is a Court of Equity or Conscience, as some call it. Let Conscience bear sway in all your publick and private Determinations: It is a Study well becoming a Christian Magistrate; to labour in all things

to

to approve his waies to God, *Acts* 24. 15. *Heb.* 13. 18. Lay out your self and your Abilities for him, before whose Barre the higheſt Judge on Earth muſt one day ſtand, and the higher our ſtanding here is, the greater will the account be at the generall Audit. The conſideration of which, I hope, will have an influence upon all your Sentences and Actions;

If

If you shall make it your VVork to exalt God, he will pour his Blessings abundantly both upon your self, and whole Family, which shall be the desire of

My Lord,

Your Affectionate

Kinsman and Servant,

Edward Leigh.

To the Candid READER.

Reader,

THere are three chief faculties, *Law, Phyſick, and Divinity*; the one reſpects the eſtate, the other the body, the third the ſoul. Every Engliſhman ſhould labour for a competency of knowledg in all three; First of the Laws of the Land, that he may not (through the ignorance thereof) prejudice his eſtate; Secondly, of Phyſick, as the Proverb ſaith, Every man is a fool or a Phyſician; that is, either knows what is good or hurtfull for his own body, or elſe is not ſo wiſe as he ſhould be; Thirdly, of Divinity; a man may be a bad Chriſtian notwithſtanding this knowledg; but he

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cannot be a good Christian without it.

The study of the Law is multorum annorum opus, *and it must needs be the more difficult to attain unto perfection in it, since, though there be Inns of Court (Colledges as it were for Students in that Profession) yet the Law it self is not so well methodized (as other Sciences) nor are there Tutors or publick Teachers of the same, as of other Arts; but every Student is to acquire knowledg in it by his own industry: most of the Cases which he reads, are to be commited to memory.*

Qui sibimet discipulus est, stultum habet pro magistro.

Of all that have written systematically as it were by way of Institutes, Littleton *is most extolled, he being the* * *Ornament of the Common Law, and (as some say) the most perfect and absolute Work that ever was written in any humane Science; I have collected my Materials out of him and Sir* Edward Cook *upon him, and his Reports,* Perkins, Fitzherb. *Nat. Brevium,*

* Cooks preface to the 10 Report, and Tookers case 2 Rep. Littleton is the true & surest Register of the fundaments and principles of our Law. Ployd. Comment. Wimbesh against Talbots.

A Philologicall

COMMENTARY.

ABATE.

ABATE is both an English and French word, and signifieth in his proper sense, to diminish, or take away; as one that abateth in Lands or Tenements, by his entry diminisheth and taketh away the Freehold in Law descended to the Heir; and so it is said to abate an account, signifying Substraction or withdrawing; and to abate the courage of a man. In another sense it signifies to prostrate, beat down, or overthrow; as to abate Castles, Houses, and the like; and to abate a Writ, is to destroy it, by pleading for them that makes it actious or not proper, and hereof cometh a word of Art, *Abatamentum*, which is an entry by interposition, after the death of the Ancestor and before the entry of the Heir. *Cook on Lit. l. 3. c. 8. sect. 475.*

ABBOT.

Abbot, in Latin *Abbas*, in French *Abbè*, is by skilfull Linguists said to come from the Syriack word *Abba Pater*, and in our common Law is used for him that in the Covent or fellowship of Canons, hath the rule and preheminence, he is called the head of the House, he is chosen from amongst the Monks and is one, as to all purposes as but in relation to the Corporation. *Cowels Interp.*

ABEIANCE.

In Abeiance i.e. *in expectation, of the French word* bayer *to expect, Cook on Lit. in potentia as the Legicians term it, in expectation or consideration of Law, in nubibus, in the Clouds. Cook on Lit. l. 3. c. 11. sect. 645.*

Abeiance, it seems to be derived from the French (*Abayer*) i.e. *allatrare*, to bark at, as Dogs do against a stranger, or Spaniels at a Feasant, put to the perks. So Children are said, *Bayer à la mamme*, when seeing the dug, they struggle and make means towards it. Our Antient Lawyers would signifie hereby a kind of hope or longing expectance, because that these things that be in *abeiance*, though for the present they be in no man, yet they are in hope and expectation belonging to him that is next to enjoy them.

When a Parson of a Church dyeth, we say that the Frechold is in *Abeiance*, because a Successour is in expectation to take it. If a Tenant for term of anothers life dyeth, the Freehold is said to be in *Abeiance*, untill the occupant entereth. If a man make a Lease for life, the remainder to the right Heirs of *J. S.* the Fee-simple is in *Abeiance*, untill *J. S.* dyeth; because as long *J. S.* liveth, his Heirs are in himself, and he hath no Heirs to take by that name and purchase, and therefore during the life of *J. S.* this remainder is in the preservation of the Law, *in nubibus*, the Cloudes or Lap of the Law.

ACCESSARIE.

1. Before the offence or fact, is he that commandeth or procureth another to do Felony, and is not there present when the other doth it; but if he be present, then he is also a principal.
2. After the offence, is he that receiveth, favoureth, aideth, assisteth, or comforteth any man that hath done any murder, or felony, whereof he hath knowledg.

He which counselleth or commandeth any evil thing, shall be judged accessary to all that followeth of this evil act, but not of another distinct thing; as I command one to beat another, and he

he beat him so, that the other dies of it; I shall be accessary to this murder, for it is a sequel of my commandement. But if I command one to steal a white Horse, and he steals a black one; or to burn such a house, which he well knoweth, and he burn the house of another: I shall not be accessary to this. So if I command one to rob such a Goldsmith of his plate in such a place, as he is going to *Sturbridge* Fair, and he break his house in *Cheap-side*, and then steal away his Plate; I shall not be accessary to this burglary, for this is another manner of Felony: But if I command one to kill one in the field, and he kill him in the City or Church; or I command him to kill him at such a day and he kill him at another day; I shall be accessary: for the killing is the substance, and the day, place, or weapon, is but circumstance. But if I command one to kill *John* a *S.* and before he hath kill'd him, I come and say, that I am penitent for my malice, and charge him not to kill him, and yet he kill him; I shall not be accessary. Where the principall is pardoned, or hath his Clergy, the Accessary cannot be arraigned; for the Maxime of the Law is, *Ubi non est principalis, non potest esse accessorius*, for it doth not appear by the judgment of the Law, that he was principall; but if the principall after attainder be pardoned, or hath his Clergy allowed him, there the accessary shall be arraigned, because it appeareth judicially that he was principall. Some have holden, that neither for felony nor maim, the Accessary shall be arraigned, till the attainder of the principals.

Plo. Com. Sanders case.

Cook 4. Rep. Cases of appeals and indict. Siers 42. B.

In the lowest and highest offences, there are no accessaries, but all are principals, as in Ryots, Routs, forcible Entries, and other Transgressions, *vi & armis*, which are the lowest offences; and so in the highest offence, which is *Crimen læsæ majestatis*,

Cook on Lit. l. 1. c. 8. sect. 71.

In alta proditione nullus potest esse accessorius, sed principalis solummodo. Fulb. pr. separat. 5. c. p. 43.

jestatis, there be no accessaries, but in Felony there are both before and after.

In the third of Queen *Mary* a maidservant conspired with a bad fellow to rob her Mistris, and in the night she opened the door, and brought the fellow to the bed of her Mistris, who did kill the Mistris, the maid holding the candle, but saying nothing; she was not a Principal, (though she was present at the act, and did concur with the murderer from the beginning to the end) but accessary, because opening of the door, and holding of the candle was not parcell of the consummation of the act. *Quære* if this be petty treason in the Maidservant, since it is but murder in the other, although she was present when her Mistris was murdered. Yet she cannot, as I take it, be a traytor else, the principal being but a murderer.

ACQUITTANCE.

Termes of Law.

Acquittance is a discharge in writing of a Summe of Money, or other duty which ought to be paid or done. This word differeth from those which in the civil Law be called *acceptilatio*, or *Apocha*, for the first of these may be by word, without writing, and is nothing but a feigned payment and discharge, though payment be not had. *Apocha* is a writing witnessing the payment or delivery of Money, which dischargeth not unless the Money be paid.

ACQUITER.

Cook on Lit. lib. 2. sect. 142.

Acquiter is compounded of *ad* and the old Verb *quietare*, and signifieth in Law to discharge or keep in quiet, and to see that the Tenant be safely kept from any Entries or molestation, for any manner of service issuing out of the Land to any Lord that is above the Mesne, hereof cometh acquital *& quietus est*, i. e. he is discharged; and he that is discharged of a felony by judgment.

judgment, is said to be acquitted of the felony *acquietatus de felonia*, and if it be drawn in question again, he may plead *auter fois acquite*.

And acquitall is either in deed or in Law; acquitall in deed is either by verdict, or by battell, by verdict when by a Jury he is found not guilty of the offence whereof he is charged: by battell, as when in an appeal the plaintiff yeeldeth himself creant or vanquished in the field, the judgment shall be that the appelee shall go quit, and that he shall recover his damages. *Cook. 2 Instit. 385.*

Acquital in Law is where two are indicted, the one as principall, the other as accessary, if the principall be acquitted indeed, the other shall not be tryed, but shall be call'd to be acquitted in Law of course, but if the principall be discharged for the insufficiency of the indictment against him or have his Clergy the accessary is not acquitted.

ACRE.

Acre, is a certain parcell of Land that containeth in length 40 perches, and in bredth four perches, it comes from the Germane word (*Acker*) *id est*, *ager*. *Acra olim incerta nunc verò certa per Statut. 31. Ed. 1.*

ACTION.

Action, an action is a right of prosecuting in judgment of a thing which is due unto any one.

It may well be called an Action, *quia agitur de injuria*, for it is a complaint of an injury received. Actio est jus prosequendi in judicio, quod alicui debetur. *Ratione objecti circa quod versatur.*

ACTIONS are

1. Personall, whereby a man claimeth Debt or other Goods and Chattels, or Damage for them, or Damages for wrong done to his person, it is properly that which in Civil Law is called *actio in personam*.
2. Reall, whereby the Demandant claimeth

tide to have a Freehold in any Lands, or Tenements, Rents, or Commons in Fee-simple, Fee-tail, or for term of life.

3. Mixt, whereby something in the reallity is recovered, and damages also, as in a Assize.

41. *Ass. pl.* 15. *Fitzh. ex.* 74. *Co. l.* 9. *fol.* 87. *a. Fulb. paral. second par. second dial.* & alii.

Actio personalis moritur cum persona. This rule is not generally to be admitted, but only in such Cases where the wrong did principally and immediately rest upon a mans person, as if one scandalize or beat another, if either party dy the action is gone, but an Executor may have a Writ of Covenant, which is a thing meerly personall, or any Action upon the Case, as the Case is.

Fulb. paral. second part second dial.

An Action upon the Case (called by the Civilions, *Actio injuriarum*) is so termed in the Common Law, because every mans Case must be in the Action, specially, and at large set down; for in that Action, the writ ought to comprehend the special matter, as well as the Declaration.

Cook 5. *Rep.*

If a man deliver a horse to one to keep him safely, the Defendant *equum illum tam negligenter custodivit, ut ob defectum bonæ custodiæ interiit.* So I trust my Shepherd with my sheep, and they perish through his negligence, an Action of the Case lieth here.

Cook 4. *Rep. actions upon slander.* 5. *Rep. Sep. cots Case. Brooks Abri. fol.* 4.

An Action upon the Case doth not ly at the Common Law for calling a man heretick, or adulterer, but in the Spiritual Law, for those of the Common Law cannot discusse what is Heresie, or Adultery, but for calling one Traitor or Felon an Action lieth at the common Law.

If a Smith prick my Horse with a nail, I shall *Brook ubi supra. Fitz. Herbert. in Natura Brev. hath the same, and gives this reason, because it is the duty of every Artificer to do his Art duly and truly as he ought.*

have

have an Action of the Case, and so likewise if he warrant to cure my Horse and doth not; but if he do what he can, and not warrant the curing of him, it will not lie.

If one charge another that he hath forsworn himself, this is not actionable, because he may be forsworn in usuall communication, *quia benignior sententia in verbis generalibus seu dubiis est præferenda* 2. It is an usuall word of passion and choler to say that another hath forsworn himself, as if one say to another, that he is a villain, rogue, or varlet, *vel similia*, these will not bear an action, for *boni judicis est lites dirimere*, but if one say to another that he is perjured, or that he hath forsworn himself in such an action, in such a Court, for such words an Action may be maintainable, for here it appeareth that he hath forsworn himself in a judicial proceeding. So if a man say, that another is main sworn, a word in the North for perjured, or in Welsh call a man an Idoner, which is to the same purpose, an Action will lie. *Cook 4. Rep. Actions for slander. Hob Rep. fol. 126.*

In every Action upon the Case for slanderous words, two things are required. 1. That the person which is scandalized be certain. If one say one of the servants of *John* a *S.* is a notorious thief, he having divers, these words will not bear an Action for their uncertainty. 2. That the scandall be apparent by the words themselves; and therefore if the Defendant say to the Plaintiff, that he is full of the Pox, it shall be taken to be the Small Pox, though the Plaintiff declares with an *innuendo*, the French Pox, for words shall be taken in *meliore sensu*, where they may be applied two waies. *Cook ubi supra.*

If one say to *J.S.* Thou art a Traytor, here *constat de persona*, and the Action lieth; or if one scandalize a man in his Profession or Trade, by which he gets his living: as *Skinner* a Merchant, *Cook 4. Rep. actiones de scandalis.*

said of *Manwood* chief Baron, That he was a corrupt Judg, and it was adjudged that these words were actionable. *Popham* saith, If one say of a woman that keeps an Inn, that she hath a great infectious disease, by which she loseth her guests, she shall have an action upon the Case.

If one say of a Merchant, that he is a Bankrupt knave, an action lies, or that he will be a Bankrupt in two days, which imports onely an inclination; yet an action lies. If one call another thief or traytor generally the action will lie, but if one say, Thou art a thief, for thou hast robbed my Orchard; or, for thou hast robbed my Hop-ground; these words are not actionable, for the last words prove it to be no Felony, and so qualifie the proper sense of this word Thief.

If the Goaler of malice fore-thought, lay so many irons on the prisoner, as to lame him, he shall have his Action on the Case. If a man play with others at Dice, and he hath false Dice, with which he playeth and winneth the others money; he which hath lost his money, may have his action on the Case for this deceit. An action of trespass upon the case lieth against the keeper of a common Inn, if goods be imbezeled *infra hospittium*. If a man sell a Horse to another, and warrant him to be good, and the Horse hath some secret disease in his body which he knoweth of; the other shall have a writ of trespass on the Case against him. So if one sell Wine, and warrant it to be good, and it is naught, an action of the Case will lie.

Fitz. Herb. Nat. brev. Action upon the Case. Cook 8 fol. 32. Calyes Case. Id. ib.

If a mans servant be beaten, the Master shall not have an action for this Battery, unless it be so great, that by reason thereof, he loseth the service of his servant; but the servant himself shall have an action for every petty battery, *Cook 7. Rep. Marys Case.*

The Master hath no damage by personall battery of his servant.

AD-

ADJOURNMENT.

Adjournment, is when any Court is put off, and assigned to be kept again at another place or time.

ADMISSION.

Admission, is when one that hath right to present to a Church being void, doth present him to the Bishop of the Diocess in which the Church is, who upon examination finding him *idoneus persona* that is capable and able, doth consent that he shall be Parson, and saith *admitto te habilem*.

ADMINISTRATOR.

Administrator, is he to whom the ordinary (*id est*) the Bishop doth commit or give power to dispose and administer the goods, and Chattels within his Diocess belonging to any person that is dead, without Executor for the benefit of such persons, or if the Party make a Will and Executor and they all refuse, or the Executor be within the age of 17 years. *Cook 5. fol. 29. Piggots case.*

Administrator *durante minore state*, cannot sell any of the goods of the dead, unless it be of necessity for the payment of debts, or *bona perritura*; for he hath his office of administration *pro bono & commodo* of the Infant, and not for his prejudice. The words of such Letters are, *Administrationem omnium & singulorum bonorum ad opus, commodum, & utilitatem executrix. durante sua minore state & non aliter, nec alio modo committimus*; such administration ceaseth at the age of seventeen of the Infant. Where one hath goods onely in an inferiour Diocess, yet the Metropolitan of the same Province, pretending that he had *bona notabilia* in divers Diocesses, commits administration, this administration is not void, but voidable by sentence, because the Metropolitane hath jurisdiction over all the Diocesses within his Province, but if *Cook 5. Rep Princes Case.*

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an Ordinary of a Dioceſſe commit adminiſtration of goods, when the Party hath *bona notabilia* in divers Dioceſſes, ſuch anminiſtration is meerly void, both for the goods in his Dioceſſe, and elſewhere, becauſe that by no means he can have juriſdiction of the Cauſe.

ADVOWSON.

Cook on Lit. l. 2. ſect. 180.

Advowſon of a Church is the right of Preſentation or Collation to the Church, *Advocatio*, ſo called, becauſe the right of preſenting to the Church was firſt gained by ſuch as were Founders, Benefactors or Maintainers of the Church, *viz.* 1. *ratione fundationis*, as where the Anceſtor was Founder of the Church, or 2 *ratione donationis*, where he endowed the Church, or 3. *ratione fundi*, as where he gave the ſoil whereupon the Church was built, and therefore they were called *advocati*, and thereupon the advowſon is called *jus patronatus*.

In an Advowſon or Rectorſhip, there are three diſtinct Rights, *viz.*

1. *Jus preſentationis*, which doth belong to the Patron.
2. *Jus Ordinationis* to the ordinary.
3. *Jus poſſeſſionis*, to the Parſon imparſonee.

Cook on Littelton l. 3. c. 13. ſect. 722.

If a man ſeized of an Advowſon in Fee, by his Deed granteth the next Preſentation to *A.* and before the Church becometh void, by another Deed grant the next Preſentation of the ſame Church to *B.* the ſecond grant is void; for *A.* had the ſame granted to him before, and the Grantee ſhall not have the ſecond avoidance by conſtruction. This hath been reſolved by the Juſtices.

AFFEERORS.

** It comes of an old French word* effeurer. i.e. *to tax or fine* Minſh.

* *Affeerors* are ſuch as are appointed in Court-leets, to mulct ſuch as have committed any fault, which

which is arbitrably punishable, and for which no expres's penalty is prescribed by Statute.

The amerciament is the act of the Court, and t e affeerement the act of the Jury, *Cook lib.8. Greisties* case,*fol.*40.*B.*

AFFRAY.

Affray is derived of the French *Affrayer*,which signifieth to terrifie. It may be without word or blow given, as if a man should shew himself furnished with Armour or Weapon which is not usually worn, it will strike a fear into others that be not armed, as he is: for which reason it is a common wrong and inquirable in a Leet,which makes it differ from assault, which is always a particular injury. 4 *H.*6. 10. 8.*Ed.* 4. 5.

AGE.

There are diversity of Ages, which the Law takes notice of.

A Woman hath seven Ages for several purposes, appointed to her by Law, as seven years for the Lord to have aid *pour file marier*, nine years to deserve dower, twelve years to consent to marriage,untill fourteen years to be in ward, 14 years to be out of ward,if she attained thereunto in the life of her Ancestor, sixteen years to tender her marriage, if she were under the age of fourteen at the dearth of her Ancestor. and twenty one years to alienate her Lands, Goods, and Chattels. *Cook on Lit.l.*2.c.4. *sect.*103. *Lit.Ten.tit. Dower & l.* 2.c.4.*p.*22. *Cook on Lit.* ubi supra.

A man also by the Law for several purposes hath divers Ages assigned unto him; viz. twelve years to take the Oath of Allegiance in the Leet, 14 years to consent to marriage, and for the Heir in soccage to choose his Guardian, and fourteen years is also accounted his Age of discretion, fifteen years for the Lord to have *aide pour faire* *Fitz. Herb. Nat. Brev. in brevi de rationabili auxilio. Lit. Ten.*

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fitz Chivaler, under 21 to be in ward to the Lord by Knights ſervice, under 14 to be in ward to a Guardian in ſoccage, and 21 to be out of ward of a Guardian in Chivalry, and to alien his Lands, Goods and Chattels. Before the age of twenty one years, a Man or a Woman is called an Infant. Full age regularly is twenty one years for man or woman to enable them to ſeal any Bond or any Deed whatſoever; a man cannot lawfully be impannelled in a Jury before that age, and at 17 years he may adminiſter as Executor.

Cook on Lit. l.3.c.1. ſect.259. Lit.Ten.l.2. c.4.p.22 & l.3.c.1.p. 50,57.

AGREEMENT.

Agreement (ſaith *Plowden*) is a word compounded of two words, *aggregatio & mentium*, *i. e.* agreement of mindes, it is a conſent of mindes in ſomething done or to be done, *ab aggrediendo dicitur*, ſaith *Spelman*.

Plowden Term.Paſc. anno 4. E. 6.

Reniger against Fogaſſa.

If I ſell all my Corn for Twelve pence every Buſhell, notwithſtanding the uncertainty of the quantity of the Corn, and of the ſumme for it, yet this is a good agreement.

Plowden ib.

So where one lets a Cloſe, rendring Twelve pence of Rent for every Acre, notwithſtanding the uncertainty of the Rent, yet it is a good agreement, for it may be reduced to a certainty, by meaſuring of the Corn or ground.

ALIEN.

Alien, is derived from the Latine word *alienus*, and according to the Etymology of the word, it ſignifies one born in a ſtrange countrey, under the obedience of a ſtrange Prince.

Alienæ gentis or alienæ ligeantiæ.

Cook on Lit.

Such an one is not capable of inheritance within *England*.

1. Becauſe the Secrets of the Realm may thus be diſcovered.
2. The Revenues of the Realm (which are the ſinews

finews of Warre, and ornament of Peace) ſhall be taken, and enjoyed by ſtrangers born.

3. This will tend to the deſtruction of the Realm. *Cook l. 7. Rep. Calv. Caſe.*

He cannot have any reall or perſonall action concerning Land, unleſs he be an alien Merchant friend, and then he may have a Leaſe for years, of Houſes, Warehouſes, and Conveniences for habitation and Merchandizing, and if he be diſturbed in the poſſeſſion of them, he may maintain actions of treſpaſs. And if he be naturalized by Act of Parliament, then he is not accounted in Law *alienigena*, but *indigena*, as a natural born Subject, and may purchaſe and maintain actions as Engliſhmen.

ALMS.

Alms, and relief of poor people, being a work of charity, is accounted in Law Divine Service, for what herein is done to the poor for Gods ſake, is done to God himſelf. *Cook on Lit.*

If it were ordained that no Alms ſhould be given for no neceſſity, this Cuſtom and Statute were void, becauſe no generall Cuſtom or Statute muſt be directly againſt the Law of God. Nevertheleſs, the Statute in the 24 year of King *Ed.* 3. whereby it is ordained. That no man under pain of impriſonment, ſhall give any alms to any vagrant beggers that may well labour, that they may ſo be compelled to labour for their living, is a good Statute, for it obſerveth the intent of the Law of God. *Jura naturalia jure civili dirimi non poſſunt. D. and Student.*

AMERCIAMENT.

Amerciament in Latine is called *miſericordia*, becauſe it ought to be aſſeſſed mercifully, and this ought to be moderated by affeerement of his equals, *Cook on Lit. lib. 2. c. 11. p. 194.*

quals, or else a Writ *de moderata misericordia* doth lie, or because the party which offendeth putteth himself on the mercy of the KING.

Term. of Law. Cook 8. Rep.

A fine is alwaies imposed and assessed by the Court, but Amerciament by the Countrey.

ANCESTOR.

Ancestor is derived of the Latine word *antecessor*, and in law there is a difference between antecessor and predecessor, for antecessor is applied to a naturall person, as *I. S. & antecessores sui*; but predecessor is applied to a body Politique, or Corporate, as *Epis. Lond. & predecessores. Sic Rector de D. & predecessores sui.*

Cook on Lit. l. 2. c. 4. sect. 103.

AN, JOUR.

An, jour, The law in many cases hath limited a year and a day to be a legall and convenient time for many purposes. The Wife or Heir hath a year and a day, to bring an appeal of death. If a man be wounded or poysoned, and dieth thereof within the year and the day, it is Felony. A Protection shall be allowed but for a year and a day, and no longer: a year and a day to remain in antient demeine to enfranchise a Villain.

Cook on Lit. l. 3. c. 7. sect. 422.

An jour, and *waste*, is a forfeiture when a man hath committed petty treason or felony, and hath lands which he holdeth of some common person, the King in detestation of the crime, might by his Prerogative cause the trees to be digged up, the houses to be rased and pull'd down, and the pastures and meadows to be plowed up: but the lands so defaced were to escheate to the Lord, and the King had no other benefit then before, but for the good of the Common-wealth it was provided by *Magna Charta*, Chap. 22. that instead of such spoil, the King should have the lands of such felon for a year and a day, and afterwards the Lord

Cook 2 Institut. 37.

to have it without such spoil. This Statute of *Prerogativa Regis*, made in the 47 year of *E.*2. is thought by *Stamford* and others to be in force as to this point, and hath made them conceive erroneously, but that Statute being repealed by an Act in 42 *E.*3 *cap.*1. the Act of *Magna Charta*, as to this is full in force. The King shall not have *annum diem, & vastum* of lands holden in Gavel-kind, where the Father is hanged: but if he be outlawed and abjured for felony, he shall. Some hold that the custom of *Kent*, *The Father to the Bow, the Son to the Plow*, must be taken strictly; for if he be attainted and die in prison, his lands shall escheat. If one be arrested for felony, and breaks the arrest; so that in pursuit of him he is killed, because he would not otherwise be taken; the King in this case shall have the year, day, and waste. *Id ib.*

ANNATES.

Annates, seemeth to be all one with first-fruits, because the rate of the first-fruits paid of spirituall things is after one years profit.

ANNUITY.

Annuity, is a yearly payment of a certain sum of money granted to another in fee for life or years, charging the person of the grantor onely. *Cook on Lit.*144.

For it, no action lieth, but onely a Writ of Annuity against the grantor or his heirs, if the grantor grant for him and his heirs. *Fitz. Herb. Nat. brev.* P.152.

If one grant to another an annuity *pro consilio impendendo*; if he will not give counsell, the other may stay the annuity, because he cannot have the thing, for which he grants the annuity. It is a conditionall grant, though there be not any word of a condition. *Lloyd. an.* 6. *resp. by Browning against Bester.*

If one grant to one learned in the Law, or in Physick, an annuity for terme of the life of the Grantee

Grantee *pro consilio impendendo* to the Grantor; and the Grantor dieth, the annuity shall not cease by this, but the Grantee shall hold for term of his life, and yet it was granted and was executorie for the Counsell, but no Counsell may be given to the Grantor when he is dead, so that by the act of God, the Grantee is discharged of giving Counsell.

Plowd. Comment. p.458.

If an Annuity be granted *pro consilio impenso & impendendo*, and the Grantee commit Treason whereby he is imprisoned, so that the Grantor cannot have access unto him for his Counsell, yet nevertheless the annuity is not determined by this non feasance, yet it was the Grantees act and default to commit the Treason, whereby the imprisonment grew, but the Law excuseth him; because the not giving counsell was compulsory, and not voluntary in regard of the imprisonment.

6.H.8. Dy.

If I grant to *J. S.* an annuity of ten pounds a year *pro consilio impenso & impendendo*; If *J.S.* be a Physician, it shall be understood of his counsell in Physick, if a Lawyer of his counsell in Law. An annuity is granted *pro consilio impenso, & impendendo* to one *Plomer* Attorney, there is contention between the Grantor and a stranger, and the Attorney *dat consilium adversario concessoris, sed non est requisitus ad dandum consilium per concessorem sibi in illa materia*, whether this were against the effect and intention of the former grant, and it was held no, but the Annuity shall continue.

Bacons Collection.

APPEAL.

Cook on Lit. l.2.c.11. sect.189.

Appeal cometh of the French word *Appeller*, that signifieth to accuse or appeach, it is an accusation, or of *appeller* to call, because *appellans vocat reum in judicium*, He calleth the Defendant into judgement.

Cook on Lit. l.3.c.8. sect.500.

There

There are three sorts of Appeals.

1. Of wrong to his Ancestor, whose Heir male he is, and that is only of death.
2. Of wrong to the Husband, and is by the wife only of the death of her Husband to be prosecuted whilest she is a widow. *Cook ubi supra.*
3. Of Wrongs done to the appellants themselves, as robbery, rape, and mayhem.

The Law prohibiteth not counsell in an appeal, as it doth in an Indictment, because there is no appeal brought, but that of common presumption, the appellant hath great malice against the Appellee. As when the Appeal is brought by the wife of the death of her Husband, or by the Sonne of the death of his father, or that an appeal of robbery is brought for stealing of goods: but when that man is indicted at the Kings suit, the King intendeth nothing but justice with favour. *An Appeal is called but a suit of revenge, ergo not much favoured.* 11 *H.* 4. 13. *Dr. and Student.* c. 48.

If he that is attainted of Treason or Felony be slain by one that hath no authority, in this Case his eldest son can have no appeal, for he must bring his appeal as Heir; which being *ex provisione hominis*, he loseth it by the attainder of his father, but his wife shall have an appeal, because she is to have her appeal as wife, which she remaineth, notwithstanding the attainder, because *maris & fœminæ conjunctio est de jure naturæ*, and therefore s indissoluble. The reason why a woman hath appeal *de morte viri*, is because by his death she is thought less able to live and maintain her self; if she marry again, her appeal is determined, though the new married Husband be dead within a year and day after his death that was slain. The appeal must be within the year and a day after the Deed, *Cook* 4 *Rep. Cases of Ap. & Indict.* *Womans Lawyer.* 8 *H.* 4. 18. *Termes of Law.*

Indict. It shall be brought within a year after the
T. of Law. stroke, and not the death, *Stamford.*
T. of Law. An appeal of Mayhem is in manner but a tresspais, for he shall recover but damages, yet the indictment shall say *quod felonice mahemavit.*

APPENDANT.

Cook on Lit. l. 2. c. 11. s. 148. *Appendant* is any inheritance belonging to another that is superiour or more worthy.

Cook 4 Rep. Tyrring. Case. The thing Appendant ought to agree with the nature and quality of the thing unto which it is appendant, a Leet cannot be appendant to a Church or Chappel, for they are of several natures

Id ib. A thing corporate cannot be appendant to a thing corporate, nor a thing incorporate, to a thing incorporate, but a thing incorporate as an advowson, to a thing corporate as a Mannour, or a thing corporate, as Land, to a thing incorporate, as an Office.

APPRENTICE.

Apprentices, quasi apprehensores, apprendre to learn, are such persons who do serve a certain time, (for the most part seven years) by pact for the learning of any Art, it is from the French word *Apprendre*, which signifies to learn in any Art, thence they have apprentisage, and we apprentishp, as also *apprentisage, davocas plaidans,* for the apprentishp of the Lawyers, and thence with us some are called apprentices to the Law, and sometime apprentices to the Bar, who are those who are permitted *salutare cancellos fori vel barros* there publickly to plead, in the time of *H. 6. Fortescue* saith, there were in the Ins of Court and Chancery, at the least 2000 of them, which prodigious number may be admired, since in the Parliament Rolls, 20 *Ed.* 1. Rot. 5. *in dorso*: it is there ordained *in his verbis, De Attornatis & apprenti-*

Mr Seldens notes on Fortescue. pag. 3.

cium,

cii, D. Rex injunxit J. de Metingham, *& ſociis ſuis, quòd ipſi per eorum diſcretionem provideant & ordinent certum numerum de quolibet Comitatu de melioribus & legalioribus, & libentius addiſcentibus, ſecundum quod intellexerunt quòd Curiæ ſuæ & populo de regno melius valere poterit, & majus commodum fuerit. Et quod ipſi quos ad hoc eligerent Curiam ſequantur, & ſe de negotiis in eadem Curia intromittant, & alii non. Et videtur Regi & ejus Concilio, quod ſepties viginti ſufficere poterint, apponant tamen præfati Juſticiarii plures ſi viderint eſſe faciendum, vel numerum anticipent, & de aliis remanentibus fiat per diſcretionem eorundem Juſticiariorum*, &c.

Theſe Apprentices of Law were prohibited to come to the Parliament at *Coventry* by *Henry* the fourth, in the fifth year of his Reign, as appears by a Writ directed to a Sheriff thus, *Nolumus autem, quòd tu ſeu aliquis alius vicecomes Regni noſtri prædicti, aut apprenticius, ſive aliquis alius homo ad Legem aliqualiter ſit electi*, &c. therefore this Parliament was called *Parliamentum indoctum* and had in its deſign nothing more then the ruine of the Church and Laws.

APPORTION.

Apportion, This word cometh of the word *portio*, which ſignifieth a part of the whole, and apportion ſignifieth a diviſion or partition of a Rent or Common, and is either, *Cook on Lit. l. 2. c. 12. ſect. 222.*

1. Voluntary,
2. Or by conſtraint of Law.

APPURTENANT.

Appurtenant and Appendant are things that by time of preſcription have belonged, appertained, and are joyned to another principal thing, by which they paſs and go as acceſſary to the ſame ſpecial

thing by vertue of these words *pertinentiis*, as Lands, Advowsons, Commons, Waies, Courts to a Mannour house, or Office. Appendants are ever by prescription, appurtenants may be created in some Cases, at this day.

Cook on Lit. l.2.c.11.

ARBITREMENT.

Arbitrement, it is so called, because the Judges elected therein may determine the controversie not according to the Law, but *ex boni viri arbitrio*, or else because the parties to the controversie have submitted themselves to the judgment of the arbitrators, not by compulsory meanes, but *ex libero arbitrio*, out of their own accord. It is a power given by the parties litigant to some to hear and determine some matter in Suit between them, to whose judgment they bind themselves to stand.

L. Dyer, term. mich. Anno sexto Ed.6.75.

There is a diversity between it and concord, that an arbitrement may be pleaded, although the time of performance of it be not yet come, but a concord ought to be executed, and satisfied before the action brought, or it is no good plea.

Five things are incident to an Arbitrement.

Dyer 217. Pl. 60.

1. Matter of controversie.
2. Submission.
3. Parties to the Submission.
4. Arbitrators.
5. Rendring the award, which may be either
   1. By word or,
   2. By writing.

ARRAIGN.

Y. of Law.

Arraign, A prisoner is said to be arraigned, when he is indicted, and put to his tryal.

Dr. and Student. c.48.

One arraigned upon an an indictment of felony or murder shall have no counsell, but the Judges shall so instruct him in all things that pertain to the order of pleading, that he shall run in no danger by

by his mispleading, to arraign an Assise to prosecute by such a Writ.

ARREST.

Arrest, is derived as some think of the French word *arrester* to stay, or from the Greek word ἄρεσον, a Decree or Sentence of the Court. *Doderidge.*

Arrest is when one is taken and restrained from his Liberty by power or colour of a lawfull warrant. Arrest signifieth properly, a decree of a Court, by vertue of which a man is arrested, &c.

If a man be struck, and it is doubtfull whether he will die, a man may arrest him which struck him, untill it be known whether he will die or no. *Brook. abri. fol.* 182. B.

The person of a Baron which is a Peer of the Parliament, shall not be arrested in Debt or Trespas for his body, for none of the Nobility which is Lord of the Parliament, and by the Law ought to be tryed by his Peers, shall be arrested by his body. *Cook 6. Rep Countess of Rutlands Case.*

The Law intends that they assist the King with their counsell for the Common-wealth, and keep the Realm in safety by their prowesse and valour. And they are intended to have sufficient in Lands whereby they may be distrained, this Priviledge extends also to women that are Countesses by birth or marriage, if those by marriage loose not that dignity by intermarriage with one under the degree of Nobility. They shall not therefore be put in Juries, although it be the service of the Countrey. *Cook 9 Rep Earl of Salops Case.*

An arrest in the night is lawfull, for the Officer ought to arrest a man when he can be found, for otherwise peradventure he shall never arrest him, *quia qui male agit odit lucem*, and if the Officer do not arrest him when he findeth him and may arrest him, the Plaintiff shall have an action upon the Case, and recover all his loss in dammages. *Cook 9 Rep. Mackallies Case.*

No man ſhall be arreſted upon the Sabbath day by a new act, &c.

ASSAULT.

Aſſault, is from the Latine word *Aſſultus*, which denoteth a leaping or flying upon a man, ſo that it cannot be performed without the offer of ſome hurtfull blow, or at leaſt ſome fearfull ſpeech, and therefore to rebuke a Collector with foul words, ſo that he departed for fear without doing his Office, was taken for an aſſault. To ſtrike at a man though he were neither hurt nor hit with the blow, was adjudged an aſſault 22 *lib. Aſſ. Plea.* 60. Aſſault doth not alwaies imply neceſſarily a hitting and therefore in treſpaſs, for aſſault and battery, a man may be found guilty of the aſſault, and yet excuſed of the battery. 40 *Ed.* 3, 4. and 25 *Ed.* 3. 24.

27 *Aſs. Pl.* 11.

ASSEMBLY.

Aſſembly, unlawfull, is where above the number of two do aſſemble to do ſome unlawfull act.

Y. of Law.

ASSISE.

Aſſiſe ſayeth *Littleton, eſt nomen æquivocum*, ſometimes it is taken for a Jury, for in the record of an Aſſiſe, the word is *Aſſiſa venit recognitura*, &c. is the ſame as *Jurata venit recognitura*, and in a Writ of right the Tenant putting himſelf on God, and the great Aſſiſe is the ſame as upon God and his Country, *viz.* the Jury, but moſt properly it is taken for a Writ or Action, and it lieth where any man is put out of his Lands, Tenements or any profit to be taken in a certain place, and ſo diſſeiſed of his Freehold. At the common Law aſſiſe was *remedium maxime feſtinum*, for in this the Defendant ſhall not pray the aid of any but the King, alſo *maxime beneficiale*, for in no action at the Common Law a man ſhall recover Land

Land it ſelf, and damages, but only in an Aſſiſe againſt the diſſeiſor.

There be four Aſſiſes in an Aſſiſe of Novell diſſeiſin, of Mort danceſter, of darreine preſentment, and of Utrum.

Aſſiſe cometh of the Latin word *Aſſideo*, which is to aſſociate or ſit together.

ASSUMPSIT.

Aſſumpſit, (of the Lat. *aſſumptio*) is a voluntary promiſe made by word, by which a man aſſumeth and taketh upon him to perform or pay any thing to another. *Term. of Law.*

It holds good in Law, when there is ſomething laid down in conſideration: For a promiſe without conſideration will not bind in Law to performance, but is called *nudum pactum ex quo non oritur actio.*

ATTACHMENT.

Attachment, ſignifieth a taking hold, or apprehending by commandement of Writ, from the French word *attacher*.

It differs from an arreſt or *Capias*, for that proceedeth out of the inferiour Courts by precept and Attachment out of the Superiour Courts. By Precept or Writ, an arreſt is only upon the body of a man, an Attachment is more general, and extends to the taking of goods. *Kitchin* ſaith a man may attach a Cow. *Terms of Law.* *Miniſh.*

ATTAINDER.

Attainder, is when a man hath committed Treaſon or Felony, and after conviction judgment hath paſſed upon him, he is then ſaid to be attainted, and ſuch attainder hath theſe effects, that his blood is ſo ſtained and corrupted thereby, that he is ſaid to be convicted when the Jury hath found him guilty, but not attainted till judgment.

If a man doth adhere to the Kings enemies, and die, or be ſlain before a tainder, he ſhall forfeit nothing, nor ſhall his blood be corrupt. This was the caſe of *Jack Cade*, who being ſlain in open Rebellion could no way be puniſhed, or forfeit any thing, and therefore in the 29th year of *H.6. cap.* 1. was attainted by Parliament; before that time it was rare to attaint a man after his death, but ſince frequent.

Cook on Lit. l.3.c.13. ſect.745.

1. His Children cannot be Heirs to him, nor any other Anceſtor.
2. If he were noble and gentle before, he and all his Children and Poſterity are by his attainder made baſe and ignoble in reſpect of any Nobility or Gentry which they had by their birth.
3. This corruption of blood is ſo high, that regularly it cannot be poſſibly ſalved but by Authority of Parliament. The Kings Letters Patents will not do it.

ATTAINT.

Attaint, is a Writ that lieth where a falſe verdict is given in Court of Record upon an iſſue joyned by the parties and of antient Writers it is called *breve de convillione*, and is derived of the participle *tinctus*, or *attinctus*, becauſe if the petty Jury be attainted of a falſe Oath, they are ſtained with perjury, and become infamous for ever, for the judgment of the Common Law in the attaint importeth eight great and grievous puniſhments.

Cook on Lit. l.3.c.8. ſect.5.14.

1. *Quòd amittat liberam Legem in perpetuum*, he ſhall never be received to be a witneſs, or of any Jury, nor can he be Champion in a Writ of Right.
2. *Quòd foris faciat omnia bona & catalla ſua.*

3. *Quòd*

3. *Quòd terra & tenementa in manus Domini Regis capiantur.*
4. *Quòd uxores & liberi extra domus suas ejiciantur.*
5. *Quòd domus suæ prosternantur.*
6. *Quòd arbores suæ extirpentur.*
7. *Quòd prata sua arentur.*
8. *Quòd corpora sua carceri mancipentur.*

So odious is perjury in the eye of the Common Law.

It is a Substantive made (say some) of the French verb *atteindre*, *id est*, *assequi* or *attingere*, because he is catched and overtaken rather of the French *teindre*, in Latin *tingere* to stain, dye, colour, *unde Gal. Teint* Latin *tinctus*, as we say, he is attainted, or tainted of Treason, *i.e.* stained. *Cowes Institut. Minsh.*

ATTORNEY.

Attorney, is an antient English word, and signifieth one that is set in the turn, stead, or place of another. Of these some be private and some be publick, as Attorneys at Law, whose Warrant from his Master is, *ponet loco sui talem Attornatum suum*, which setteth in his turn or place, such a man to be his Attorney. Those that be private are sometimes by writing, sometimes by word, to make or take Livery or Possession, to make claim to Lands, to enter to sue, *&c.* And it is a Rule, that where the Attorney doth less then the Authority and commandment, all that he doth is void, but where he doth that which he is authorized to do, and more, it is good, for so much as is warranted, and void for the rest. If a man be disseised of black Acre, and white Acre, and a Warrant of Attorney is made to enter into both, and make Livery, and the Attorney entereth only into one and maketh Livery, it is void for all. So if a Letter of Attorney be made to deliver

Cook on Lit. l. 1. c. 3. d. 1. sect. 59.

Perk. 187. 109.

deliver ſeiſin upon a condition, and he doth it without a condition, it is void, becauſe he did leſs then his Authority. But if one have Authority to deliver ſeiſin to *J. S.* and he do it to *J. S.* and *J. N.* that is good as to *J. S.* becauſe more then his Authority.

ATTOURNEMENT.

Of the French tourner to turn: therefore they ſay to turn Tenant. Minſh. Cook on Lit. l. 3. c. 10. ſect. 551.

Attournement, is an agreement of the Tenant to the grant of the Seignory, or of a Rent, or of the Donee in tail, or Tenant for life or years, to a grant of a reverſion, or remainder made to another. It is an antient word of Art, and in the Common Law ſignifieth a torning or attorning from one to another, we uſe alſo *attornamentum* as a Latin word, *& attornare* to attorn. A grant to the King, or by the King to another, is good without attornment by his Prerogative. Alſo where one doth grant a Rent, Reverſion, Remainder, Service, or Seignory to another by way of deviſe, by a laſt Will and Teſtament. So when the thing granted doth paſs by way of uſe, as where one levieth a Fine, bargaineth and ſelleth, hath Inrolement of Covenants to ſtand ſeiſed of a reverſion, *&c.* to the uſe of another there needeth no attornment. Conuſee of a fine, of a ſeignory, rent, reverſion, *&c.* before attornment, cannot maintain an Action of Waſt, nor a Writ of Entry *ad Communem Legem*, or in *Caſu promiſcæ*, or in *conſimili Caſu*, upon the alienation of the Tenant eſcheate upon the dying of the Tenant without heir, or ward upon his dying his Heir within age therefore by force the ingroſment of the fine, if it be of a Seigniory, he may compell the Tenant to attorn by a Writ called a *Per que ſervitia*, if of a rent, by a Writ called a *Quem redditum reddit*, and if of a reverſion, or remainder of a Tenement for

for life, then by a Writ called a *Quid Juris clamat.*

AWARD.

Award of the French word *agarder*, which is to decide or judg.

Which is either 1. Interloquutory.
2. Or Definitive.

AVOWRY.

Avowry, is a manifeſtation or maintenance of a thing formerly done, and cometh of a French word *advouer*, and it is uſed in our Law when one hath taken a diſtreſs for Rent or other things, and he who is diſtrained ſueth a Replevin, and he that took the diſtreſs doth juſtifie.

Auxilium ad filium militem faciendum, & ad filium maritandum, is a Writ directed to the Sheriff of every County where the King or other Lord hath any Tenants to levy of them reaſonable aid towards the Knighting of his Sonne at 15 years or the marriage of his daughter at 7, at the Common Law it was not limited, yet ought to have been *rationabile auxilium*, but now it is limited to 20 s. for a Knights Fee, and ſo for 20 l. *per annum in ſoccagio.*

Regiſt. Orig fol. 87. *Glanvil. l. 9. cap.* 8.

Weſt. 1. 3. *Ed.* 1. 25. *Ed.* 3. 11.

AYDE.

Ayde, is where a particular proprietor is impleaded and not being able to defend the thing for which he is impleaded, he prayeth ayde of ſome better able, and it is two waies.

1. In a Plea reall *teners petit auxilium de A S. ſine quo reſpondere non poteſt.* 4. *H.* 30.
2. In a Plea perſonall, and then the Defendant *petit auxilium ad manulerendum exititium.*

B.

BAIL.

Cook on Lit. l.1.c.10. sect.79.

What kinds of offenders may be bailed, See Cook 2 part of Instit. c. 15.

Termes of Law.

Dalton.

Bail or *ballium* is safe keeping or protection, and thereupon we say, when a man upon surety is delievered out of prison, *traditur in ballium*, he is delivered into bail, *i.e.* into their safe keeping, or protection from prison, it is derived from the French word *bailler*, and that also cometh of the Greek βαλλειν, they both signifie to deliver into hand, for he that is bailed, is taken out of prison, and delivered into the hands of his friends.

BAILEMENT.

Bailement, is a delivery of things, writings, goods, or stuff to another.

The Intendment of Law in Cases of Bailement is that it resteth indifferent, whether he be guilty or not untill tryal.

BAILIFF

Cook on Lit. l.1.c.10. sect.79. Id.l.3.c.1. sect.248.

Bailiff, This word Bailie (as some say) cometh of the French word Bailiff in Latin *Bailivus*, but in truth, Bailie is an old Saxon word, and signifieth a safe Keeper or Protector, the Sheriff that hath *custodiam comitatus*, is called *bailivus*, and the County *baliva sua*, when he cannot find the Defendant, he returned, *non est inventus in baliva mea.*

BANK.

Cook on Lit. l.2.c.3. sect.96.

Bank, is a Saxon word, and signifieth a bench, or high seat or a Tribunal, and is properly applyed to the Justices of the Court of Common Pleas, because the Justices of that Court sit there in a certain place, and legall Records term them *Justiciarii de banco*. Another Court there is called the Kings Bench, both because the Records of that

that Court are ſtiled *coram Rege*, and becauſe Kings in former times have often perſonally ſate there.

BARGAIN.

Bargain, and ſale is when a recompence is given by both the parties to the bargain. By it Lands may paſs without livery of Seiſin, if the bargain and ſale be by deed indented, ſealed and inrolled. *Termes of Law.*

A warranty made upon the concluding of a bargain and ſale doth bind, but not if the warranty be made after the bargain concluded. If a man ſell unto one certain cloth, and warrant it to be of ſuch a length, and it is not of that length, he which buyes the cloth, may have an action of deceit againſt him, but if the warranty be made at ſome other time after the bargain, he may not have ſuch a Writ, unleſs the warranty be in writing. *Fitz. Nat. brev.* 98. K.

The Grant or bargain and ſale of the profits of Land is the Grant of the Land it ſelf, for the profits of the Land, and the Land it ſelf are one and the ſelf ſame thing in ſubſtance, but one may leaſe his Park, excepting the wood and underwood, and his Mannor, reſerving the Warren, but the ſoil of the wood and Warren ſhall go to the Leſſee. If I leaſe a farm, excepting the wood, or for ſo much of this farm as is woodland, and may by the name of a wood be demanded in a precipe the ſoil it ſelf is excepted, but otherwiſe it is of paſture or arrable ground, which hath wood growing upon it. *Cook l.* 5. *Fors Caſe, & l.* 11. *Laiford's Caſe.* 10 *H.* 7. 9. 6 *E.* 6. 71. *Dy.* 14 *H.* 8. 1. 33 *H.* 8. *Br. Reſervant.* 39.

BARRE.

Barre, is a word common as well to the Engliſh as to the French, of which cometh the Noun a Barre *Barra*. It ſignifieth legally deſtruction for ever, or taking away for a time of the action of *Cook on Lit. l.* 3. *c.* 13. *ſect.* 708.

of him that hath right, it is called a Plea in Barre when ſuch a Barre is pleaded.

BARRETOR.

The word is derived of Barret *which ſignifieth a quarrell, a barre-troubler, or barre-ſtirrer.*

Barretor, is a common mover and exciter or maintainer of ſuits, quarrells or parts either in Courts or elſe where in the Countrey. In Courts of Record or others, as in the County, Hundred, or other inferiour Courts. In the County in three manners. 1. In diſturbance of the Peace, in taking or keeping of Poſſeſſions, or Lands in controverſie, not only by force, but alſo by ſubtilty. 2. And moſt commonly in ſuppreſſion of truth and right. 3. By falſe inventions and ſowing of calumniations, rumours and reports, whereby diſcord and diſquiet may grow between neighbours.

Cook on Lit. l.3.c.13. ſect.701.

A common Barretor, or Barre offender, is a common quareller, mover, or maintainer of quarrels, either in the Court or Countrey. Some derive it of the French word *Barrateur* which ſignifieth a deceiver, others of the Latin word *Baratro*, which ſignifieth a vile knave or unthrift, ſome of two legall words *Barra*, which ſignifieth the Barre in Courts, where cauſes are debated, and *rettum*, which ſignifieth a crime or offence. He is *ſeminator litium, & pacis Domini Regis perturbatur.*

Cook 8. Rep. Barrets Caſe. p.37. He cauſeth men to be troubled at the Barre, Minſh.

BASTARD.

Vitilitigator quaſi vitioſe litigator.

Baſtard, is he that is born of any woman not married, ſo that his father is not known by the order of the Law, and therefore by the Law he is ſometimes called *filius nullius*, the ſon of no man, ſometimes *filius populi* the ſonne of every man. *Cui Pater eſt populus, Pater eſt ſibi nullus & omnis.*

Either from the French Baſtard, as Cui Pater eſt populus, non habet ille patrem.

The civil Law doth legitimate the Child born before matrimony, as well as that which is born after

after: and giveth unto it succession in the Parents inheritance. But to the Child born out of matrimony, the Law of *England* alloweth no succession The Civilians say, *Matrimonium subsequens tollit peccatum prius; matrimonium subsequens legitimos facit quoad sacerdotium*; (because they are legitimate by the Canon Law). *non quoad successionem, propter consuetudinem regni, quæ se habet in contrarium.*

Cowelin instit. or from βάσταρις Meretrix quia procreatur ex mretrice. *Cook on Lit. Cook 8 Rep. Letchfords Case. Stat. 20. H. 3. 9. Cook preface to his 4 Rep.*

The Bishops were instant with the Lords, that they would consent, That all such as were born afore matrimony should be legitimate, as well as they that be born within matrimony, as to the succession of imheritance; because the Church accepteth such for legitimate. *Et omnes Comites & Barones una voce responderunt, Nolumus leges Angliæ mutare, quæ huc usque usitatæ sunt & approbatæ*: And all the Earls and Barons with one voice answered, That they would not change the Laws of the Realm, which hitherto had been used and approved.

If a man take a wife, which is great with child by another, which was not her husband; and after the child is born within the Espousals, then it shall be said the child of her husband, though it were but one day after the Espousals solemnized, according to that, *Pater est quem nuptiæ demonstrant*, for whose the Cow is (as it is commonly said) his is the Calf also.

Smiths Commonwealth of England. Terms of Law.

There was an Act made *ann.* 21. *Jacobi Regis*, to prevent the destroying and murthering of Bastard children, and it was continued. 3. *Caroli c.* 4. If any women be delivered of any issue, which by the Laws of this Realm should have been a Bastard, and shall endeavour by drowning, or secret burying, or any other way by her self or others to conceal the death thereof, whether it were

To the end of the first Session of next Parliament.

were born alive or not, the Mother ſo offending ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs at leaſt, that the ſame child was born dead.

Dalton. A Baſtard killeth his Mother, this ſeemeth petty treaſon, for the Mother is certainly known, but a Baſtard ſhall not be bound, though the Father were a bondſlave, for the Law doth not acknowledg any Father in this caſe.

Cook on Lit. l.1.c.1. ſect.1. A Baſtard having gotten a name by reputation, may purchaſe by his reputed or known name to him and his heirs, although he can have no heir, unleſs it be the iſſue of his body.

Id. ib. A man makes a Leaſe to *B.* for life, remainder to the eldeſt iſſue male of *B.* and the heirs males of his body, *B.* hath iſſue a Baſtard ſon, he ſhall not take the remainder, becauſe in the Law he is not his iſſue, for *qui ex damnato coitu naſcuntur inter liberos non computentur.* The Juſtices of Peace ſhall commit lewd women which have Baſtards to the houſe of Correction, there to be puniſhed and ſet on work, during the term of one whole year, there to remain till ſhe can put in good Sureties for her good behaviour not to offend ſo again.

Septimo Jacobi c.4. *and for the ſecond offence to be committed to the houſe of Correction, till,* &c.

BATTERY.

Battery, is the wrongfull beating of one; But if a man will take away my goods, I may lay my hands upon him and diſturb him, and if he will not leave, I may beat him, rather then he ſhall carry them away, for that is no wrongfull beating Menacing beginneth the breach of peace, aſſaulting increaſeth it, and battery accompliſheth it.

Dalton Juſt. of P.

BUGGERY.

BUGGERY.

Buggery, committed with mankind or beast is felony without benefit of Clergy, it being a sin against God, Nature, and the Law, and in antient times such offenders were to be burned by the Common Law.

There are two Statutes for it, 25 H.8. revived, 3 Eliz. 17. Fitz. Nat. brev. 269. B. Dalton.

One describeth this offence to be *carnalis copula contra naturam, & hæc vel per confusionem speciei, sc.* a man or a woman with a brute beast, *vel sexûs, sc.* a man with a man, a woman with a woman, See *Levit.* 18. 22,23.

BURGAGE.

Burgage, in Latin *Burgagium*, is derived of *Burgus* a Town, and it is called a Burgh or Borough because it sendeth Burgesses to Parliament. The termination of this word *burgagium* signifieth the service, whereby the Burgh is holden.

Cook on Lit. l. 2. c. 10. sect. 162.

BURGLARY.

Burglary, is usually defined the night-breaking of a house, with an intent to steal or kill, though none be killed, nor any thing stolen, and so it is of a Stable, parcell of a house, but not of breaking ones Close to kill him, nor ones House, if it be but to beat him, nor though it may be to kill him, if it be in the day time. It may be Burglary if one enter into a house and break it not, as if he come in at the chimney, or by a false key, and if he break the house, though he enter not.

It is derived of burgh a house, and laron a thief. Cook 4 Rep. as if one break down a window to hook out any thing. Cooks Case of Appeal and Indictments. 4th Rep.

Richard Vaux brings an appeal of Burglary, against *Thomas Brook*, and declares that the Defendant *domum mansionalem prædictam Richardi Vaux felonice & burgaliter fregit*, the Declaration was found insufficient because of this word *burgaliter*, but it ought to be *burgulariter*, or *burgulariter*, and the offence is called Burglary or burgulary,

and not Burgale, *burglariter est vox artis*, as *felonice*, *murdravit*, *rapuit ex ambitum*, *warrantizare*, and divers others, which cannot be expressed by any Periphrasis or circumlocution.

If a man have a mansion house, and he and all his family upon some accident are forth of the house part of the night, and at the same time, one come and breaks the house to commit felony, this is Burglary, although no man be there, for this is *domus mansionalis*.

Id. ubi supra. So if a man have two houses, and inhabit sometimes in one, and sometimes in another, and hath servants in both, and in the night when his servants are forth, the house is broke by Thieves, this is burglary.

Stamford. All Indictments of burglary are *quòd noctanter fregit*, and the night to this purpose begins at Sun

Dalton. setting, and continueth to the Sun rising.

18 *Eli. c. 6.* Burglar shall not have his Clergy.

BURGH ENGLISH.

Lit. Ten. l. 2. c. 10. *Burgh English*, or *Borough English*, is a custom in some antient Borough, that if a man have issue divers Sonnes, the youngest Sonne shall inherit, and have all the Lands and Tenements that were his Fathers within the Borough: The

So called, because this custom was first (as some hold) in England. reason of this (as *Littleton* saith) is because the youngest is presumed in Law to be least able to shift for himself.

Cook on Lit. p. 110. B. If the Lands of the nature of Borough English be let to a man and his Heirs during the life of *J. S.* and the Lessee dieth, the youngest Sonne shall enjoy it.

Cook on Lit. l. 2. c. 10. sect. 165. A man seized in fee of Lands in Burgh English, after the Statute of 27. *H* 8. makes a feoffment to divers persons in fee, to the use of himself and the Heirs males of his body begotten, *Secundum*

dum cursum communis legis, and after dieth seized according, having issue two Sons, the eldest enters and holds out the younger; yet the youngest shall have it by descent, notwithstanding the words before. *L. Dy. term. Pasch. in 2. Reg. Eliz.*

Of Land in Borough English, or Gavel-kind, the Son cannot endow his wife *ex assensu Patris*, because by possibility, he shall not continue Heir: the Father shall not have the Ward of his Son and Heir apparant of such Lands holden by Knights service, because by possibility he shall not continue Heir. *Cook 6 Rep. Gorges case*

C.

CAPITE.

CApite, is a Tenure that holdeth immediately of the King, as of his Crown or Person, that is, as he is King. A man may hold of the King, and yet not in Capite, by means of some honour, Castle or Mannor belonging to the Crown, whereof he holdeth his Land. *Cook on Lit. l. 2. c. 9. sect. 159.*

Tenure in chief is so called, *per excellentiam*, because as the head is the principall part of the body, so this is the higheſt and most honourable service in the Law, because it is done to the chief Head of the Realm, and takes its original creation by the King himself.

The Tenures in chief began in antient time upon the grants of Kings to defend their persons, and their Crown and Regality, against Enemies and Rebels. *L. Dyer p. 44. A.*

The King at this day may make a Tenure of him in chief; if he reserve this to his person, and as a Tenure in gross; but if he reserve the Tenure as of his Mannour, or Honour, or Castle, and not about the person of the King, then it is not *tenure in Capite*.

L. Dyer p. 144. B.

CASTLE.

Castle, no subject can build a Castle or House of strength imbattelled, or other fortress defensible, without the Licence of the King, for the danger which might ensue, if every man at his pleasure might do it.

Cook on Lit. p. 5.

CHALLENGE.

Challenge, is a word common as well to the English as to the French, and sometimes signifieth to claim, sometimes in respect of revenge, to challenge into the field: sometimes in respect of partiality or insufficiency to challenge in a Court persons returned on a Jury. Challenge made to the Jurors, is either made to the Array or to the Polls. Challenge to the Array, is where exception is taken to the whole number, as impannelled partially; challenge to or by the Poll, is where exception is taken to one or more, as not indifferent.

Cook on Lit. l. 2. c. 12. sect. 234.

In favorem vitæ.

By the Common Law, the prisoner upon an Indictment or appeal might challenge peremptorily thirty five, which was under the number of three Juries: but now by the Statute of 22 *H.* 8. the number is reduced to twenty in petty Treason, Murder and Felony. But by the Statute of 1 and 2 *Philip* and *Mary*, the Common Law is revived; for any treason, the prisoner shall have his challenge to the number of 35. But if he be a Lord of Parliament, and a Peer of the Realm, and is to be tried by his Peers; he shall not challenge any of his

Peers

Peers at all, for they are not ſworn as other Jurors be, but find the party guilty, or not guilty; upon their Faith and Allegiance to the King, and they are Judges of the fact, and every of them doth ſeparatly give his judgment beginning at the loweſt. But a ſubject under the degree of Nobility, may in caſe of Treaſon or Felony challenge for juſt cauſe as many he can, if he can allege cauſe of favour or malice.

Magna Charta *ſaith* per judicium Parium ſuorum.

Principall challenges to the Poll may be reduced to four Heads.

1. *Propter honoris reſpectum*, as any Peer of the Realm or Lord of Parliament, for theſe in reſpect of honour and nobility, are not to be ſworn on Juries; and if neither party will challenge him, he may challenge himſelf, for by *Magna Charta* it is provided, *quod nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, aut per legem terræ.* A Peer of the Realm ſhall not be impannelled, where any of the Commons is to have a tryal.

Cook ubi ſupra.

2. *Propter defectum*, for want or default,
   1. *Patriæ*, as aliens born.
   2. *Libertatis*, as Villains or Bondmen.
   3. *Annui cenſus*, i. e. *liberi tenementi*; as if any of the Jury impannelled cannot diſpend 40 s. by the year of his own Freehold.
   4 *Hundredorum, vicini vicinorum facta præſumuntur ſcire.*

3. *Propter affectum*, for affection or partiality, as if the Juror be conſanguineus of blood or kindred to either party, this is a principall challenge; for the Law preſumeth, that one kinſman doth favour another before a ſtranger. If either party labour the Iuror, and give him any thing to give his

verdict, this is a principall challenge; but if either party labour the Jury to appear, and to do his conscience; this is no challenge at all, but lawfull for him to do it.

4. *Propter delictum*, for crime, it being a maxime in the Law *Repellitur a sacramento infamis.*

CHAMPERTY.

Cook 2 part of Instit. c.3.

Champerty, Campi par. It is a bargain with the Demandant or Tenant, Plaintiff or defendant, to have part of the thing in suit, if he prevaile therein for maintenance of him in that suit. Every Champerty is maintenance, but every maintenace not Champerty, for Champerty is but a species of maintenance, which is the genus.

CHAMPERTERS.

Cook on Lit. lib.3.c.8. sect.500. Lamberts Just. of P.

Champerters *vel cambi participes, sunt qui per se, vel per alios placita movent, vel moveri faciunt, & ea suis sumptibus prosequuntur, ad cambi partem, vel pro parte lucri habenda, stat. anno 33. Ed.1.*

CHANCE-MEDLEY.

It cometh of two French words, that is, la plus & medler, id est, miscere.

Chance-medly, or homicide *per infortunium*, is when one is slain casually, and by misadventure, without the will of him that doth the act, of this no Appeal doth lie.

Cowells Interpr.

It is fitly so called, for in it men are medled (or committed) together by meer chance, and upon some unlooked for occasion, without any former malice.

Stamford Prærog. c.16

It is corrupted from *Chaudmelle*, which signifieth hot or suddain debate, *rixa* in the Civil Law, whence in *Scotland Chaudmelle* is opposed against forethought felony, as manslaughter with us against murder, *Seldens* notes upon *Hengham.*

But so shall not he that killeth one

If a man casteth a stone, or shooteth an arrow and another that passeth that way is killed, this manner of killing is manslaughter, by misadventure or chance-medly, for which he which killeth shall have his pardon of course, as appeareth by the Statute of 6. Ed. 1. c. 9. and he shall forfeit his goods in such manner, as he that shall kill a man in his own defence: for the life of a man is a thing precious, and favoured in the Law, so that a man which kills another in his own defence, or *per infortunium*, without any intent, this is not felony, and yet in such cases he shall forfeit his goods and chattels, for the great regard that the Law hath to the life of a man. *Coke 5 Rep.* Cases of execution.

that would rob him in his house, or the Officer which killed one that will not be arrested.

But if he that committeth this manslaughter, was doing an unlawfull act, as casting stones in an highway where men usually pass, or shooting Arrows in a Market-place, or such like, whereby a man is killed, it is felony at least.

CHANGE.

Change, If two Parsons of several Churches change their Benefices, and resign them into the hands of the Ordinary to that intent, and the Patrons make Presentations accordingly, and one of them is admitted, instituted and inducted accordingly, and the other is admitted and instituted, but dieth before Induction, the other Parson shall not retain the Benefice in which he was inducted, for the change is not perfected, being not executed.

Perkins tit. eschanges. p. 58.

CHARGE.

Charge, is where a man granteth a Rent issuing out of his ground, and if the Rent be behinde, it shall be lawfull for him, his Heirs and Assigns to distrain, till the Rent be paid, this is called a

Terms of Law.

Rent-charge. *It is called a Rent-charge, because the land for payment thereof is charged with a distress. Cook on Lit.*

CHARTER.

Charter, or Deed, is so called from the Latin *Charta*, *quâ scribi solebant*. It is called *Magna Charta*, not for the length or largeness of it, (for it is but short in respect of the Charters granted of private things to private persons) but it is called the great Charter, in respect of the great weightiness, and weighty greatness of the matter contained in it, in few words, being the fountain of all the fundamental Laws of this Realm, and therefore it may be said of it, that it is *Magnum in parvo*.

Cook on Lit. l. 2. c. 4. sect. 108. and epist. 8 Rep. and Proeme to his 2 part of Instit.

The Nobles and great Officers were to be sworn to the Observation of it.

Magna fuit quondam Magna reverentia Chartæ.

It is the quintessence of the whole bulk of the politicks of our Nation, the Charter of the peoples right, the hedg of their property, the strength of their security.

Judge Doderidge. Cook on Lit. ubi supra.

It hath been confirmed above thirty times, and commanded to be put in execution, and was bought with the blood of our Nobility, and English Ancestors in those troublesome times of King *John* and *Henry* his son. It is in our Books called *Charta libertatum*, *or communis libertas Angliæ* or *libertates Angliæ*, *Charta de libertatibus*, *magna Charta*.

Charters of Lands are Writings, Deeds, Evidences and Instruments, made from one man to another, upon some estate conveyed or passed between them of Lands or Tenements, shewing the Names,

Names, Place, and quantity of the Land, the estate, time and manner of the doing thereof, the parties to the estate delivered and taken, the witnesses present at the same, with other circumstances. *Termes of Law.*

Charters are called muniments *à muniendo, quia munitant, & defendunt hæreditatem.* *Cook on 9 Rep. Anna*

The Purchaser of Land shall have all the Charters, Deeds and Evidences, as incident to the Lands, *& ratione terræ*, that he may the better defend the Land himself, having no warranty to recover in value, for the Evidences of it are as it were the sinews of the Land, and the Feoffor being not bound to warranty, hath no use of them. Also he shall have all Deeds and Evidences, which are materials for the maintenance of the Title of the Land. *Beding-fields Case. Cook on Lit. l.1.c.1.s.1. Lord Buckhursts Case. 1 Rep. 1.*

CHATTELS.

Chattels, is a French word, and signifieth goods, which by a word of art we call *catalla*, it signifieth all goods moveable, and unmoveable, except such as be of the nature of freehold, or parcell thereof. *Cowells interp. verb. Cattalls. Kitchin fo. 22. verb. Catalla.*

Some hold that ready money is neither goods nor Chattels, nor Hawks and Hounds, because they be *feræ naturæ*, Dr. *Cowell* (in his interpreter) gives this witty reason, why Money is not to be accounted goods or chattels, because, saith he, money of it self is not a thing of worth, but by the consent of men, and so for their easier traffick or permutation of things necessary for their life. *Cook on Lit. lib.2.c.11. sect.177.*

Goods or Chattels are either, *Bona includes all Chattels, as well real, as personal. Id ib.*

1. Personal, as Horse, and other Beasts, houshold-stuffs, bows, weapons, *&c.* called personall, because for the most part they belong to the person of a man, or because they are to be recovered by personal actions.

2. Reall

2. Reall, because they concern the reality, as terms for years of Lands or Tenements, wardships.

The word goods in the Common Law comprehends such things as be either with, or without life, as a Horse or Bed. *Kitchin.*

Cook on Lit. ubi supra. *Bona dividuntur in mobilia & immobilia, mobilia rursum dividuntur in ea quæ se moveat, & quæ ab aliis moventur*, but by the Common Law no estate of Inheritance or Freehold is comprehended under these words, *bona & catalla.*

Dr. Cowels interp. Kitchin. The Civil Law sometimes puts a difference between *moventia & mobilia*, understanding by *moventia* such goods as actively and by their own accord do move themselves, as horses, oxen, sheep, and cattell, and by *mobilia* such goods as passively are moveable, or removeable from one place to another, as apparrel, pots and pans, yet regularly and for the most part, by moveables are indifferently understood goods both actively, and passively moveable. Immoveables are those goods which otherwise be termed chattels reall; for that they do not immediately belong to the person, but to some other thing by way of dependancy, as Trees growing on the ground, or fruit growing on the Trees, or a Lease or Rent for term of years, but not Lands, Tenements, or frank-tenement.

CHEVAGE.

Chevage, is a sum of money paid by villains to their Lords in acknowledgment of their bondage for their several heads, whence it is called *Chevagium.* Chevage of the French word *Chief*, as if it were the service of the head, of which *Bracton* saith, *Chivagium dicitur recognitio in signum subjectionis & Domini de Capite suo*, *Lambert* writeth it

it chivage, but it is more properly written chief-age.

CLERGY.

Clergy, is defined to be an antient liberty of the Church confirmed in divers Parliaments. It is when a man is arraigned of felony, and such like before a temporal Judg, and the Prisoner prayeth his Clergy, that is, to have his book, then the Judg shall command the Ordinary to try if he can read as a Clerk in such a book and place, as the Judg shall appoint, and if the Ordinary certifie the Judg that he can, then the prisoner shall not have judgment to lose his life. The Book was allowed to the Clergy, for the scarcity of them to be disposed of in religious houses; it was allowable in antient times for all offences whatsoever they were, except treason and robbing of Churches of their goods and ornaments. But by many Statutes made since, the Clergy is taken away, for murther, burglary, robbery, purse-cutting * horse-stealing

If the indictment be only *murdravit*, without adding *ex malitia præcogitata*, the offender shall have his Clergy. If he will read as a Clerk, he ought to read all the verse, but although he do not read at the beginning, but first spell, and after read, yet he shall have allowance as a Clerk. *in favorem vitæ.*

Forteſcue saith, that if a felon sail to read, for which he is judged to be hanged, yet in *favorem vitæ*, if he demand a Book afterward under the Gallows, and read, he shall have the benefit of his Clergy. And yet it is to be supposed, he had no Ordinary at that time to demand whether he could read, but this Case ought to be specially taken, *viz.* where the felon is judged before

Cook on Lit. l.2.c.11. sect. 209. T. of Law.

Bacons use of the Law. p.22.

* *Horse or mare-stealers shall not have their Clergy, because horses are for publick service and commerce.*

2. *The thief by them is armed to do mischief. Stamford pl. of Cr. l.2. c. 43. Id. C.94. Stamford ib. c.45.*

before the Juſtices of the Kings Bench, for if he be judged before the Juſtices of the Goal delivery it is otherwiſe, becauſe their Commiſſion ends with their Seſſion.

Dyer term. Paſch. ann. Mariæ p. 99 L. Dyer term. Michael. Anno 3. & 4 Reg. Eliz.

Clergy was allowed to an acceſſory to the ſtealing of Horſes and Mares, becauſe the Statute ſhall be taken moſt ſtrictly, which ſpeaks expreſsly but of the principall.

Although he hath been inſtructed and taught in the Goal to know his Letters, and to read, this ſhall ſerve him for his life, but the Goaler ſhall be puniſhed for this.

Fruſtra Legis auxilium implorat, qui committit in legem.

Clergy is grantable but once, to one perſon, except he be within holy orders, for ſuch a man may have it often. 4 *H.* 7. c. 13. and 1 *Ed.* 6. 12 Lord *Stamford.*

COLLEGIUM.

Collegium eſt ſocietas plurium corporum inter ſe diſtantium, & dicitur Collegium propriè cum ſimul habitant, quoniam.

1. *Simul colleguntur, & Collegium conſtituitur in Eccleſia, vel per privilegium conceſſum à ſuperiori poſt fundatam Eccleſiam.*
2. *Vel ſc. à principio fuit ordinatum quod Eccleſia eſſet collegiata.*
3. *Vel ſc. longo tempore vixerint collegialiter, & ſimul quaſi poſſeſſione Collegii.*

Item Eccleſia poteſt fieri Collegiata cum conſenſu Epiſcopi & Patroni 10 *Eliz.* 13. *Dyer.*

Colour of Office, is alwaies taken in the worſt part, and ſignifieth an evil done by pretence and countenance of an Office. But *virtute officii* or *ratione officii*, by reaſon of the office, and by vertue of the office, are taken alwaies in the beſt part, and imply that the office is the juſt cauſe of the things and the thing is purſuing the office.

Floyd. Com. Dive againſt Manyngh. f 64. *A* 58. *A.*

If

If an Officer will take more for his fees then he ought,this is done *colore officii sui*; but yet it is not part of his Office: and it is called extortion,which is worse then robbery; because that is apparant, and hath the vizor of vice: but this appeareth under the visage of vertue, and so is more hard to be avoided, and therefore the more detestable.

CONDITION.

Condition, is a restraint or bridle, annexed to a thing, to that by the not-performance thereof the party to the condition shall receive prejudice and loss, and by doing of the same,commodity and advantage. *Termes of Law.*

If a man give Lands to another, and to the Heirs males of his body,on condition that if he die without Heir female of his body; that then the Donor shall re-enter; this condition is utterly void,for he cannot have an Heir female, so long as he hath an Heir male. *Cook on Lit. l.3.c.5. sect.352.*

If a man morgage his land to *W.* upon condition, that if the morgagor and *J. S.* pay 20. s. at such a day to the morgagee,that then he shall re-enter; the morgagor dyeth before the day, *J. S.* payes the money to the morgagee; this is a good performance of the condition, and yet the Letter of the condition is not performed: but if the morgagor had been alive at that day, and he would not pay the money, but refused to pay the same; and *J. S.* alone had tendred the money, the morgagee might have refused it. *Cook on Littleton l. 3. c.5.sect. 352.*

If Feofment in fee be made upon such a condition,that the feoffee shall not alien his Land to any, this condition is void, because when a man is so infeoffed of Lands or Tenements, he hath power to alien them to any person by the Law. For if such a condition should be good, then it should deprive *Lit.l.3.c.5.*

prive him of all the power which the Law gives him, which is against reason: and therefore this condition is void. But if the condition be such, that the feoffee shall not alien to such a one, naming his name, or any of his heirs, or the issue of such a one, or the like, such conditions are good: yet the King may give land in see upon condition not to alien. *Cook l.* 5. *Knights Case. & 21. H.* 7.7.

CONFIRMATION.

Confirmation, cometh of the verb *confirmare quod est firmum facere*; and therefore it is said, that *confirmatio omnes supplet defectus, licet id quod actum est, ab initio non valuit.* It is a conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased.

Cook on Lit. l. 3. *c.* 9. *sect.* 515.

It is a strengthening of an estate formerly had, and yet voidable, though not presently void.

Fit. N. bre. f. 169. *Quelibet confirmatio aut est perficiens, crescens, aut diminuens.*

1. *Perficiens*, as if feoffee upon condition make feoffment over, and the feoffer confirm the estate of the second feoffee; so if disseisee confirm the estate of the disseisor or his feoffee.

2. *Crescens*, doth enlarge the state of a Tenant, as Tenant at will to hold for years, or Tenant for years, to hold for life.

Cook l. 9. *of Rep. Beaumonts Case.* 142.

3. *Diminuens*, as where the Lord of whom the land is holden, confirms the estate of his Tenant to hold by a less rent.

CON-

CONFISCATE.

Confiscate, this word cometh from the word *fiscus*, which (as *Minshew* saith) originally signified an hamper; but metonymically the Emperours treasure, because it was antiently kept in hampers; and such goods as were forfeited to the Emperours Treasure, for any offence, were *bona confiscata*, and so do we call those goods that are forfeited to the Kings Exchequer.

Lat'n *Confiscare i.e. conferre in fiscum. Fiscus proprie principis est, erarium rei publicæ.*

Titus ille Plinii locus ad Traianum & fortasse eadem severitate fiscum qua erarium cohibes. Cook 5. Rep. Foxleys Case. Stam. Pl. of Cr. l. 3. c. 24.

If an Appeal of robbery be brought, and the Plaintiff leaveth out some of his goods, he shall not be received to enlarge his Appeal; and because there is none to have his good so left out, the King shall have them as confiscate, according to the old rule. *Quod non capit Christus, capit fiscus.*

CONSPIRACY.

Conspiracy, The purpose or intent of a man without the act is not punishable by the Law; and although that for conspiracy a man may be punished in the Star-chamber; yet this is by the absolute power of the Court, and not by the Ordinary course of the Law.

CONSTABLE.

Constable, comes of two old Saxon word, *Kinning*, which signifieth King, and *Stable*, stability; as the stability of the King and Kingdom.

The Common Law requireth that every Constable be *Idoneus homo, i. e.* apt and fit for exercise of the said Office; and he is said in Law to be *Idoneus*,

7. Doderig.

Idoneus, which hath three things, Honesty, Science, and ability:

1. Honesty, to execute his Office truly without malice, affection, or partiality.
2. Science to know what he ought to do duly.
3. Ability as well in substance or estate, as in body to execute his Office, when need is, diligently, and not through impotency or indigence to neglect it; for if poor men which live by the labour of their hands, be elected to this Office; they will rather permit Felons and other Malefactors to escape, and neglect the execution of their Office in other points, then intermit their labour, by which their wife and children live.

Cook 8 Rep. Grieslies Case.

Dalt. Iust. of P.

The Office and authority of high and petty Constables remaineth, notwithstanding the death of the King, for their authority is by the common Law and not by commission; so also of Mayors, Bailiffs in Towns corporate, &c.

CONTRACT.

Contract, (called by the Civilians *acceptilatio*) is an agreement between parties concerning goods or lands for money or other recompence: It is called a *contract* because by covenanting *diversa voluntates in unum contrahuntur*. It is a bargain or covenant between two parties, where one thing is given for another, which is called *Quid pro Quo*, as if you sell my horse for twenty Shillings, you may keep the horse till the other have paid the money. The want of recompence causeth it to be but *nudum pactum, unde non oritur actio*. For if a man make promise to me, that I shall have twenty shillings, and after I ask it, and he will not deliver it; yet you shall never have any action to recover it, because this promise was no contract, but,

Contractus est quasi actus contra actum. *Cook.*

but a bare promiſe; but if any thing were given for the twenty ſhillings, though it were but to the value of a penny, then it had been a good contract.

If he to whom the promiſe is made, have a charge by reaſon of the promiſe, which he hath alſo performed, then in that caſe he ſhall have an Action for the thing that was promiſed, though he that made the promiſe have no worldly profit by it. As if a man ſay to another, Heal ſuch a poor man of his diſeaſe, or make an High-way, and I ſhall give thee thus much; and if he do it, I think an Action lyeth at the Common Law. *D. and Student. cap.4.*

This word (*pro*) makes a contract conditionall; as if I Covenant to make an eſtate *pro maritagio habendo*; if the marriage take not effect, I ſhall be diſcharged of this Covenant. So if an Annuity be granted, *pro conſilio impendendo*, ſtop the Counſell giving, and ſtop the Annuity; alſo if a man grant a way over his Land, and *pro chimino illo habendo*, he granteth to him a rent-charge: if one be ſtopped, the other is ſtopped; ſo it is in contracts; As for a Hawk to be delivered me at ſuch a day, you ſhall have my horſe at Chriſtmaſs; if the Hawk be not delivered at the day, you ſhall not have an Action for the horſe. *L. Dyer ter. min. Michael Anno 6 E. 6. P. 76*

The Infants contract for his meat, apparell, and neceſſaries is good, if he be of the age of fourteen years.

COPY-HOLD

Copy-hold, is a Tenure, for which the Tenant hath nothing to ſhew, but the Copies of the Rolls, made by the Steward of his Lords Court. This Tenure is called a baſe Tenure, becauſe it holdeth at mini.

The Tenants thereof do hold per copiam rotulorum Do-

at the will of the Lord; it was wont to be called Tenure in villenage.

Cook on Lit. p.63. The doing of fealty by a Copy-holder, proveth that a Copy-holder so long as he observes the custom of the Mannor, and payeth his services, hath a fixed estate.

Although in the judgment of the Law, he hath but estate for will; yet custom hath so established and fixed his estate, that by the custom of the Mannor, it is descendible to him and his Heirs; and therefore his estate is not meerly *ad voluntatem Domini*, but *ad voluntatem Domini secundum consuetudinem manerii*; and by keeping the custom he shall inherit the Land, as well as he that hath Frank-tenement at Common Law, for *consuetudo est altera Lex.*

It is an estate of inheritance, secundum quid.

Cook 4 Rep. Copy-hold case. The stile of a Copy-holder imports three things.

1. *Nomen*, his Name.
2. *Originem*, his Beginning.
3. *Titulum*, his Assurance.

1. His Name is, Tenant by Copy of Court Roll.
2. His Beginning is, *ad voluntatem Domini*, for at the beginning he was but Tenant at the will of the Lord.
3. His Title or Assurance, *secundum consuetudinem manerii*; for the custom of the Mannor hath fixed his Estate, and assured the Land to him as long as he doth his service and duties, and performes the custom of the Mannor.

Cook 9 Rep. Combes case.

35 Eliz. c. 1. If a Copy-holder be a popish Recusant, his Copy-hold is forfeit, for his life to the Lord of the Mannor, if the Lord be not Recusant, and if the Lord be, then to the King.

CORONER.

CORONER.

Coroner, is an antient Officer of truſt, and of great authority, ordained to be a principall conſervator or keeper of the peace, to bear record of the Pleas of the Crown. Although by the Law, the Coroner cannot enquire of any felony; but the death of a man; yet it hath been ſaid, that in *Northumberland* they enquire of all felonies; but this authority they maintain by preſcription. If a man be killed or drowned in the arms or creeks of the Sea, where a man may ſee Land from the one part to the other, the Coroner ſhall enquire thereof, and not the Admirall, becauſe the Countrey thereof may well have knowledg.

His Name is derived à Corona, *becauſe he is an Officer of the Crown, and hath conuſance of ſome Pleas, which are called* Placita Coronæ. *Cooks 2 part of Inſtit. c. 17. See more there. He is ſo called, becauſe he deals principally with Pleas of the Crown, or matters concerning the Crown. Cooks 4 part of Inſtit. c. 59. T. of Law.*

The empannelling of the inqueſt, and the view of the body, and the giving of the Verdict, is commonly in the ſtreet in an open place, and *in corona populi*, but this name rather cometh, becauſe the death of every ſubject by violence is accounted to touch the Crown of the Prince, and to be a detriment unto it. The Prince accounting that his ſtrength, power, and Crown doth conſiſt in the force of his people, and the maintenance of them in ſecurity and peace.

Smiths Commonwealth of England, c. 24.

If a Coroner be *minus idoneus ad officium illud exequendum*, this is a good cauſe to remove him, for he ought to be the Coroner *qui melius ſciat & poſſit officium illud intendere.*

He muſt have two Properties, *viz.* ſufficient Knowledg, Ability and diligence in execution of his Office.

Sir *Edward Cook* in his ſecond part of his *Inſtit.* c. 10. ſaith he ſhould have five Qualities.

1. Heſhould be *Probus homo.*
2. *Legalis homo.*
3. Of ſufficient underſtanding and knowledg.
4. Of good ability and power to execute his Office according to his knowledg.
5. Diligent in the execution of his Office, See more there.

Coroners remain conſervators of the Peace, within the County where they are Coroners, notwithſtanding the Kings death, for they are made by the Kings writ, and not by Commiſſion, as Juſtices are, whoſe authority is determined by the death of the King, for by the Commiſſion he maketh them *Juſticiarios ſuos*, ſo that he being once dead, they are no more his Juſtices.

Daltons Juſt. of P.

The Statute giveth the Coroner thirteen Shillings and four pence for taking inquiſition *ſuper viſum corporis.*

CORPORATION.

Corporation, is a permanent thing that may have ſucceſſion. It is an aſſembly and joyning together of many into one fellowſhip, Brother-hood and mind, whereof one is head and chief the reſt are the body.

T. of Law.

No Corporations can be made but by the King, yet his Highneſs may depute this authority to another, for ſo it cometh originally from the King.

Fulb. Law of Nature. 8. c.

COVENANT.

Covenant, is an agreement made by Deed in writing, and ſealed between two perſons.

An Infant (by the Common Law) is not of age to bind it ſelf by Covenant, *ante annos nubiles*, which

which is twelve years in a woman, and fourteen years in a man-child. *Daltons Juſt. of P.*

COVINE.

Covine, cometh of the French word *convine*, and is a ſecret aſſent determined in the hearts of two or more, to the defrauding and prejudice of another. *Cook on Lit. l. 3. c. 12. ſect. 678. Plowd. fol. 54. b.*

As if Tenant for life will ſecretly conſpire with another, that the other ſhall recover in prejudice of him in reverſion, for by this his reverſion is taken away. For this conſpiracy may very well be ſaid to be covine, ſince all the parts are therein contained, for it is an unity in the hearts of two, and it is ſecretly done in reſpect of a third who is thereby damnified, for if it be ſecret *quoad* him who is concerned, it is ſecret within the deſcription.

COUNT.

Count, cometh of the French word *conte* which in Latin is *narratio*, and is vulgarly called a declaration. The original Writ is according to his Name *Breve*, brief and ſhort, but the Count which the Plaintiff or Demandant makes, is more narrative and ſpacious, and certain both in matter and circumſtance of time and place, that the Defendant may be compelled to make a more direct anſwer, ſo as the Writ may be compared to Logick, and the Count to Rhetorick. *Cook on Lit. l. 1. c. 1. ſect. 10.*

COUNTY.

County, ſignifieth as much as Shire, both containing a compaſs or portion of the Realm, into the which all the land is divided for the better government thereof, ſo as there is no Land, but it is within ſome County: there be in *England* 41 Counties, and in *Wales* 12. *Cook on Lit. l. 2. c. 10. ſect. 124.*

COURT.

Court, is diverſly taken, ſometimes for the houſe where the King remaineth with his ordinary retinue, and alſo the place where Juſtice is judicially miniſtred. In times paſt the Courts and Benches followed the King, and his Court whereſoever he went, which thing eſpecially ſhortly after the conqueſt being found very cumberſome, painfull, and chargeable to the people, it was agreed by Parliament, that there ſhould be a ſtanding place where judgment ſhould be given, and it hath long time been uſed in *Weſtminſter*-Hall, which King *William Rufus* builded for the Hall of his own houſe. In that Hall are ordinarily ſeen three Tribunals, or Judges ſeats. At the entry on the right hand the Common Pleas. Where Civil matters are to be pleaded, ſpecially ſuch as touch Lands or contracts. At the upper end of the Hall on the right hand, the Kings Bench, where Pleas of the Crown have their place, and where Kings in former times have often perſonally ſate. And on the left hand ſitteth the Chancellour accompanied with the Maſter of the Rolls, who in Latin may be called *Cuſtos Archivorum Regis*, and certain men learned in the Civil Law, called Maſters of the Chancery, in Latin they may be called *Aſſeſſores*.

cometh of he Latin uria which lſo is etched from cura (as Valla writeth) whereby it is notified that heed and care ought to be taken in the deciding of controverſies.

Wherein are holden all common Pleas between Subject and Subject of all matters of common Law ſo called, for that it ſerveth for the exact and preciſe adminiſtration of the common Law, Smiths *Common-wealth of* England.

Smiths *Commonwealth of* England, camera ſtellata, *or of the Latin word* ſtellio, *a ſtarry Beaſt, whence oſenage is called by the Civilians crimen ſtellionatus, becauſe that ſinne is puniſhed in this Court*, Lamb. *Jur. of Cour.*

There is alſo another Court of ſpecial note called the Star-chamber, either becauſe it is full

of

of windows, or becauſe at the firſt all the roof thereof was decked and garniſhed with gilded ſtars.

The Judges of this Court are the Lord Chancellour, the Lord Treaſurer, all the Kings Majeſties counſell, the Barons of this Land; and many other Courts there are, of which ſome may fine and not impriſon, as the Court Leer, ſome cannot fine or impriſon, but amerce, as the Court-county, Hundred, Baron, for no Court may fine or impriſon which is not a Court of Record: ſome may impriſon and not fine, as the Conſtables at the petty Seſſions for any affray made in diſturbance of the Court may impriſon but not fine: ſome Courts can neither impriſon, fine, nor amerce, as eccleſiaſticall Courts held before the Ordinary, Archdeacon or other Commiſſaries, all which proceed according to canon or civil Law; and ſome may impriſon, fine, and amerce, as the caſe ſhall require, as the Courts of Record at *Weſtminſter*, and elſe where. *Cook 11 Rep. Godferys caſe.*

Courts of Record are the Kings Courts, as he is King, thoſe have that credit, that no amerciement can be taken againſt any thing there entred or done.

CURSITER.

Curſiter, they are called curſitors, becauſe they make *brevia de curſu*, Writs of courſe ſo called, becauſe they have a ſetled form preſcribed in an antient Book, therefore called the Regiſter of Writs. *Judge Doderidge.*

COURTESIE OF ENGLAND.

Courteſie of England, is where a man taketh a Wife ſeiſed in Fee ſimple or Fee tail general, or ſeiſed as Heir of the Tail ſpeciall, and hath iſſue by the Wife, Male or Female, ſo the *It is called courteſie of England, becauſe it is*

not used in any other Realm, some say he shall not be Tenant by the courtesie, unless the Child which he hath by his Wife be heard cry, for by the cry it is proved that the child was born alive, Lit.

issue dead or in life, if the Wife die, the Husband shall hold the Land during his life by the Law of England. If it be born alive it is sufficient, though it be not heard cry, for peradventure it may be born dumb, and this is resolved clearly in Pains Case 8 Rep. with whom agree Fitzherbert and Perkins 9. 47. for the pleading is that during the marriage he had issue by his Wife, and upon the evidence it must be proved that the issue was alive, for mortuus exitus non est exitus, Cook on Lit. l. 1. cap. 4.

Nam dicunt E vel A quotquot nascuntur ab Eva.

CURTILAGIUM.

Curtilagium, is a soil or Garden spot belonging to a Messuage, *quasi curta pecia terræ.* Fairfax. 21 Ed. 4. fol. 52.

Cook ib. & Pains case. If the Wife be delivered of a monster, which hath not the shape of mankind, this is no issue in the Law, but although the issue hath some deformity in any part of his body, yet if he hath humane shape, this sufficeth.

If the issue be born deaf or dumb or both, or be born an idiot, yet it is a lawfull issue to make the Husband Tenant by the courtesie, and to inherit the Wifes Lands of such Inheritances whereof actuall seisin cannot be gained untill a certain time (as Perkins fol. 90. b. & 91. a. of Rent in fee, in right of the Wife, untill the day of payment, nor of advowson in gross untill the incumbent die) of such Inheritances the Husband shall be Tenant by the courtesie, although he be not actually thereof seised during the Coverture.

CUSTOME.

CONSUETUDO.

This word *Conſuetudo*, hath in Law divers ſignifications. *Cooks 2 part of the Inſtitutes c. 30.*

1. It is taken for the Common Law, as *conſuetudo Angliæ.*
2. For Statute Law, as *contra conſuetudinem communi concilio regni edit.*
3. For particular cuſtoms, as Gavel kind, Borough, Engliſh, and the like.
4. For Rents, Services, due to the Lord, as *conſuetudines & ſervitia.*
5. For Cuſtomes, Tributes, or Impoſitions, as *de novis conſuetudinibus levatis in regno, ſive in terra ſive in aqua.*
6. Subſidies, or Cuſtomes granted by common conſent, that is, by authority of Parliament, *pro bono publico*, theſe be, *Antiquæ & rectæ conſuetudines.*

CUSTOM.

Cuſtom, is one of the main Triangles of the Laws of *England*, theſe Laws being divided into. *Cook on Lit. lib. 2. c. 10. ſect. 165.*

1. Common Law.
2. Statute Law.
3. Cuſtom.

Cuſtom is a reaſonable act iterated, multiplied and continued by the people time out of mind. Of every cuſtom there be two eſſential parts, time and uſage, time out of mind, and continual and peaceable uſage without interruption. *Sir John Davis his Reports. Cook ubi ſupra.*

Some ſay there are three eſſential qualities of a good Cuſtom.

1. Certainty.
2. Reaſonableneſs.
3. Uſe or continuance.

Others ſay, a good Cuſtom ought to have four inſeparable Properties.

The commencement of a custom must be upon a reasonable ground and cause. Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. *Sir* John Davis *Rep. Case of Tanistry.* *Davis* ubi supra.

1. A reasonable commencement (for every Custom hath a commencement, although that the memory of man extend not to this, as the River *Nilus* hath a fountain, although the Geographers cannot find it) whence these maximes in Law. *Obtemperandum est consuetudini rationabili tanquam legi. In consuetudinibus non diuturnitas temporis, sed soliditas rationis est consideranda.* For if the custom be unreasonable in the originall, no use or continuance can make this good. *Quod ab initio non valuit, tractu temporis non convalescit.* A thing that is void *ab initio*, no prescription of time can make this good. Every custom is not unreasonable which is against the particular rule or maxime of the positive Law, as the custom of Gavel-kind and Borough English are against the maxime and descent of inheritance, and the custom of *Kent*, *the father to the bough, the son to the plow*, is against the maxime of escheates, for *consuetudo ex certa causa rationabili usitata privat communem legem.* Besides a custom may be prejudiciall to the interest of a particular person, and yet reasonable; where it is for the benefit of the common-wealth in general: *Salus populi suprema lex esto*, as custom to make bulwarks upon the land of another for defence of the Kingdom, 36 *Hen. 8. Dyer* 60. B, and to raze houses *in publico incendio*, 29 *H.* 8. *Dyer* 36. B. A custom which is prejudicial and injurious to the Common-wealth, and begins only by oppression and extortion of Lords, hath no lawfull commencement, but is void: So by *Littleton fol.* 46. Custome that the Lord shall have fine of his Frank-tenant for marriage of his Daughter is held void; and custome that the Lord of the Mannor shall detain distress taken upon his demeans untill a fine be made to him for dammage at his will, is also void, 3 *Eliz. Dyer* 199. B.

See him.

Malus usus abolendus est.

2. Custom

2. Custom ought to be certain, and not ambiguous, for *incerta pro malis habentur*, an uncertain thing may not be continued time out of mind without interruption. *Davis ib.*

3. Custom ought to have continuance without interruption, time out of mind, for if it be discontinued within memory, the custom is gone: for as continuance makes custom, so discontinuance destroyes it. *Nihil tam conveniens naturali æquitati, quam unum quodque dissolvi eo ligamine quo ligatum est.* Consuetudo *is nothing else but* communis assuetudo.

4. It ought to be submitted to the Prerogative of the King, and not exalt it self against it; for prescription of time makes a custom, but *nullum tempus occurrit Regi.* If a man hath Toll of Wreck, or Stray by prescription, this extends not to the goods of the King: So prescription to have sanctuary for treason; or to have *catalla felonum*, is void against the King; because that such a priviledge *exaltat se in prærogativam Regis*, 1 Hen. 7. 236.

Custom is either,

1. Generall, which is currant through *England.* That which is used *per totam Angliam*, is Common Law, *& quod habetur consitendo per totam Angliam*, is not a good manner, *to alledge* a Custom, *Cook Rep. Combes Case.* *The particular and approved custom of every Nation is the most usual binding and assured Law.* Cook pref.

If any generall Custom were directly against the Law of God, or if any Statute were made directly against it, as if it were ordained, that no Alms should be given for no necessity, the custom and statute were void. 5 Rep.

2. Particular, is that which belongeth to this or that County, as Borough English in many places, Gavel-kind to *Kent*, for all the Heirs Males to inherit alike; Countries have their Customes according *Dr. and Student. c. 6.*

ding to the constitution of the place: as in *Kent North-wales*; because those Counties have been most subject to forreign invasions, that every man there may be of power for resistance; the inheritances for the most part descend in Gavel-kind, *viz.* to every brother alike. There are particular Customs also to this or that Lordship, City, or Town. The Custom of the County of *Buckingham* is, and hath been time out of mind, that every Swan which hath her course in any water that runs to the Thames within the said County; if the Swan come upon the Land of any man, and make her nest, and hath Cignets upon the same, he that hath the property of the Swan, shall have two of the Cignets, and he whose land it is, shall have the third Cignet which shall be of least value: this was held a good custom, because the owner of the land suffered them to breed there, whereas he might have chased them out.

Cook 7 Rep. case of Swans.

Cook 8 Rep. case of the City of London.

In *London*, 1. If the Debtor be a Fugitive, the Creditor before the day of payment may arrest him to find better surety.

2. They may there enter a mans house with the Constable or Beadle upon suspicion of Bawdery.

3. They may remove an Action before the Major, depending the Plea before the Sheriffs.

These Customs in *London* though against the rule of Common Law, are allowed *eo potius*, because they have not only the force of a Custom, but also are supported and fortified by authority of Parliament.

Consuetudo loci est observanda. *Camb. Brit. in Gloucestershire.*

In some places within the County of *Gloucester*, the goods and lands of condemned persons fall into the Kings hands for a year only and a day, and after that term expired (contrary to the Custom of all *England* besides) return to the next heirs.

Baldwin

Baldwin le Pettour, held certain Lands in *Hemingston* in *Suffolk* by Serjeanty, for which on *Christmass-day* every year before the King of *England* he should perform one *Saltus* (that is, he should dance) one *sufflatus* (puff up his cheeks, making therewith a sound) and one *bumbulus* (let a crack downward.) *Cambden in Suffolk*

In some Countrey an Infant when he is of the age of fifteen years may make a feoffement, and the feoffement is good; and in some Country when he can mete an Ell of Cloth. *D. & Student c. 10*

In som places the Widow shall have the whole or half, *dum sola & casta vixerit*. Sir *George Farmour* claimed by Custom in his Mannor of *Torcester* in *Northampton-shire*, to have a Common Bake-house, and that none others should bake to sell there; and it was adjudged a good Custom *Cook 8 Report*. Case of the City of *London*. See more there concerning particular Customs.

Custom differeth from prescription, because

1. Custom is common to many, and prescription particular to this or that man.
2. Prescription may be for a shorter time then Custom, *sc.* for five years, or one year or less: As if a fine be duely levied of Lands or Tenements, and be not gainsaid within five years, this is a barre to all claim for ever. *Termes of Law.*

Custom is nothing else but νόμος ἄγραφος as indeed Law is no other thing then νόμος ἔγγραφος. *Suidas.*

D.

D.

DAMMAGE.

Dammage, in the Common Law, hath a ſpeciall ſignification, for the recompence that is given by the Jury, to the Plaintiff or Defendant, for the wrong done unto him. *Cook on Lit. l.3. c.7. ſect.431. Damnum dicitur à demendo, cum diminutione res deterior fit, Cook lib.10. Rep.* So coſts of ſuit are dammages to the Plaintiff, for by them his ſubſtance is diminiſhed.

DAMMAGE FEASANT.

Dammage Feaſant, is when a ſtrangers Beaſts are in another mans ground, without lawfull authority or licence of the Tenant of the ground, and there do feed, tread and otherwiſe ſpoil the Corn, Graſs, Woods, or ſuch like. In which caſe, the Tenant, whom they hurt, may therefore take, diſtrain, and impound them, as well in the night as in the day; but for rent and ſervices none may diſtrain in the night ſeaſon.

D. and Student.

He that hath the hurt may take the Beaſts as a diſtreſs, and put them in a Pound overt, ſo it be within the ſame ſhire, and there let them remain till the owner will make him amends for the hurt: but by the Statute of Queen *Mary*, the Beaſts muſt not be driven above three miles out of the hundred.

DEAN.

Dean, is derived of the Greek word δέκα, that ſignifieth ten, becauſe he was antiently over ten Prebend-

Prebands or Canons at the leaſt in a Cathedrall Church, and is head of his Chapter. *Cook on Lit*

DEBT.

Debt, debts due by Obligation, ſhall be paid by Executors before debts by ſimple contract, and debts by ſimple contract before Legacies. *Cook 9 Rep. Pinchons caſe.*

If a man take a woman which is i debted to other perſons, the Husband and Wife ſhall be ſued for this debt, the Wife living. But if ſhe die, the Husband ſhall not be charged for this debt after her death; unleſs the Creditour of the Husband and Wife recover the debt during the Coverture, then, although the Wife die, yet the Husband ſhall be charged for to pay this debt, after the death of the Wife by this recovery. *Fitzh. Na. Br. tit. Det.*

If a man leaſe land for term of life to a woman rendring rent, and ſhe taketh a Husband, and after the rent is behind, and the woman die, the Husband ſhall be charged by a Writ of Debt for this rent behind, becauſe that he takes the profit of the land by reaſon of his Wife. *Id. Ib.* Qui ſentit commodum ſentire debet & onus.

By Law of the Realm Debt only ariſeth upon ſome contract or penalty impoſed, upon ſome Statute, and not by other offences, as in the Civil Law, *debitum ex delicto.*

If a Tailor make a garment for me, if we be not agreed before what I ſhall pay for the making, he cannot have an Action of debt, otherwiſe it is for Victuals and Wine. But the Tailor may detain the garment untill he be payed, as an Innekeeper may his gueſts horſe for meat, or he may have an action upon the Caſe, upon an aſſumſit to pay him ſo much as he deſerves. *Cook lib. 8. Rep. p. 147.*

DECIES TANTUM.

Decies tantum, is a Writ, and lyeth where a Juror in any enqueſt, taketh money of the one part or

or other to give his verdict, then he shall pay ten times as much as he hath received.

DECEIT.

Deceit, the Common Law giveth a double remedy against such as endammage others by deceit, *viz.* either a Writ of deceit or an Action upon the Case.

DEED.

Factum un fait it is called of the Civilians literarum obligatio. *Cook on Lit. l.1.c.5. sect.40.*

Deed, This word in the understanding of the Common Law is an Instrument written in Parchmen or Paper, whereunto ten things are necessarily incident.

1. Writing.
2. In Parchment or Paper.
3. A person able to contract.
4. By a sufficient name.
5. A person able to be contracted with.
6. By a sufficient name.
7. A thing to be contracted for.
8. Apt words required by Law.
9. Sealing.
10. Delivery.

Traditio loqui facit Chartam. In Deeds the Delivery is to be proved.

In another place on *Lit.* (*viz. l.*3. *c.*1. *sect.* 259.) Sir *Edward Cook* saith, a Deed is an Instrument consisting of three things, *viz.* Writing, Sealing, and Delivery, comprehending a bargain or contract between Party and Party, man or woman. Also in *Goddards* Case 2 *Rep.* he saith there are three things of the essence and substance of a Deed, *viz.* Writing in Paper or Parchment, Sealing, and Delivery, and if it have these three, although it want, *in cujus rei testimonium sigillum suum apposuit*, yet the Deed is sufficient; for the delivery is as necessary to the essence of a Deed, as putting of the Seal to it, and yet it is not necessary to express it in the Deed, that it was delivered.

vered. The date of the deed is not of the substance of it, for if it want date, or if it be a false or impossible date, as the 30 day of *February*, yet the Deed is good, for it takes effect by the delivery, and not the day of the date. The Order of making a Deed is,

1. To write it.
Then to seal to it. *Cook 2 Rep. Goddards Case.*
And after to deliver it: And therefore it is not necessary, that the sealing or delivery be mentioned within the writing, because they are to be done after. *Cook 5 Rep. Wyndams Case.*

Every Deed shall be taken most strongly against the Grantor, and most beneficially for the Grantee, and is most strong against the Lessor, and most beneficial for the Lessee.

Of Deeds some be,

1. Indented, so called, because they are cut to the fashion of the teeth in the top or side, which are either, *Which division groweth from the form or fashion of them.*

Bipartite, when there be two parts and Parties to the Deed. *West. part. 1. Symb.*
Tripartite, when there are three parts and Parties.
Quadripartite.
Quinquepartite.

2. Polls which are plain without any indenting so called, because they are cut even or polled, every deed that is pleaded, shall be intended to be a deed poll unless it be alledged to be indented. *Cook on Lit. l. 3. c. 5. sect. 370.*

If a deed beginneth, *Hæc Indentura*, and the parchment or paper is not indented, this is no Indenture, because words cannot make it indented. And although there are no words of Indenture in the Deed, yet if it be indented, it is an Indenture in Law, for it may be an Indenture without words, but not by words without indenting. *Cook ubi supra. And Cook 5 Rep. Stiles case.*

DEFEISANCE.

Defeisance, is fetched from the French word *defaire*, that is, defeat or undo, *infectum reddere quod factum est.*

Cook on Lit.

DEFAULT.

Default, is a French word, and *defalta* is legally taken for non-appearance in Court. There be divers causes allowed by Law for saving mens default, as

Cook on Lit. l.3.cap.7. sect.438.

1. By Imprisonment.
2. Inundation of Waters.
3. A Tempest.
4. Minority, but sickness is no cause of saving a default, because it may be so artificially counterfeited, that it cannot be known. *Citatus ad locum non tutum, non arctatur comparere is a rule in the Civil Law, as if the Plague be there.*

SE DEFENDENDO

Se defendendo, is not matter of justification, because the Law intends it hath a commencement upon an unlawfull Case. For quarrels are not presumed to grow without some wrongs either in words or deeds; therefore the Law putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods.

Bacons Collections of the Law.

If a man kill another in his own defence, he shall not lose his life nor his Lands, but he must lose his goods, except the party slain did first assault him, to kill, rob, or trouble him by the High-way side, or in his own house, and then he shall lose nothing.

Id. use of the Law.

DEFORCE.

Deforce, *deforciare* is a word of Art, and cannot be expressed by any other word, for it signifieth

to withhold Lands or Tenements from the right owner, a deforiour differeth from a disseisor.

1. A man may disseise another without force, which Act is called simple Disseisin.

2. A man may deforce another that never was in possession.

DEMAUNDANT.

Demaundant, is he which is Actor in a reall Action, because he demandeth Lands. And Plaintiff, *querens* in Actions personall and mixt *quia queritur de injuria*, *Tenant*, *Tenens*, in reall Actions, and *defendant defendens* in Actions personal and mixt.

DEMAINES.

Demaines, according to the common speech, are the Lords chief Mannor-place, which he and his Ancestors have from time out of mind kept in their own hands, and have occupied the same together with all buildings and houses whatsoever. *Dominicum de maine* of the hand *i. e.* manured by the hand, or received by the hand, *Cook on Lit. l. 1. c. 1. sect. 10.*

DEMURRER.

Demurrer, cometh of the French word *demeurer* Lat. *demorari* to abide, and therefore he which demurreth in Law, abideth in Law, *moratur* or *demoratur in lege*. *Minshew. Cook on Lit. lib. 2. cap. 3. sect. 96.*

DENIZEN.

Denizen, quasi *deins nee* born within the Kings ligeance, and thereupon in Latin called *Indigena*, or from *donaison donatio*, because his freedom is given unto him by the King. *Cook on Lit. cap. 11. sect. 198.*

DENIZATION.

Denization is three-fold.

1. Absolute, as the common denizations be to them, and their heirs without any limitation or restraint.

Cook Calvins Case.

2. Limited, as when the King doth grant Letters of his denization to an alien, and to the heirs males of his body, or to an alien for term of his life, for *cujus est dare, ejus est disponere*, and this denization of an alien may be effected three manner of waies, by Parliament, Letters Parents, and conquest, as if a King and his Subjects should conquer another Kingdom as well *ante nati* as *post nati*, as well they which fought in the field, as they which remained at home, are all Denizens of the Kingdom conquered.

DEODAND.

Quasi Deo dandum, *i.* *e.* in eleemosynas erogandum.

Deodand, is when any man by misfortune is slain by a Horse or by a Cart, or by another thing that moveth to further the death, then the thing that is cause of his death, and which at the time of his misfortune did move, shall be forfeit to the King, and that is called *Deodand*, and pertains to the Kings Almoner, for to dispose in Alms and Deeds of Charity.

Where a man killeth another with the sword of J. at stile, the sword shall be forfeit as a Deodand *D. and Student. c.* 51.

If a man killeth another with my Sword, it shall be forfeit as a *Deodand*, for it shall be adjudged my fault, that I did not keep my weapon from him, *Dr. and Student. Omnia quæ movent ad mortem, sunt Deo danda. Cook l.* 5. *Foxleys Case.*

This Law concerning *Deodands*, is grounded upon the Law of God, *Exo.*2.28.

DE-

DERAIGNE.

Deraigne, cometh of the French word *derayer*, or *deraigner*, *i. e.* to displace, or to turn out of his order, and hereof cometh deraignment, a displacing, or turning out of his order. So when a monk is deraigned, he is degraded and turned out of his order of Religion, and become a Lay man. *Cook on Lit. l.2.c.11. sect.202. Dicitur à detinendo because detinet is the principall word in the Writ.*

DETINUE.

Detinue, is a Writ that lyeth against him who having goods and chattels delivered to him to keep, refuseth to deliver them again. *Cook on Lit. Cook 4 Rep. Southcotes Case.*

Upon generall acceptance of goods to keep or to keep safely, if the goods be stolen or otherwise perish, the Bailiff or he that accepts them shall answer for them. Otherwise it is, if he take them upon speciall acceptance, to keep them as his own goods.

DEVISE.

Devise, cometh from the French word *diviser*, *id est dispertiri*, because those Lands or Goods which appertain to the Divisee, are distributed into many parts, wherefore it is better written divise then devise, or else it may be derived from the French word *deviser*, i. e. *fermocinari, confabulari*, so as *deviser per son testament*, is to speak by his testament what his mind is to have done after his decease. If lands be devised to a man to have to him *in perpetuum* or to him and his assigns for ever; in these two cases the devisee shall have a Fee-simple: *Perkins* holds he hath only an Estate for the term of his life, for these words (for ever) saith he, can extend to none other then the devisee, because no more persons be named in the devise, and the life of man in this respect is said to be for ever with him. But Sir *Edward Cook* determines it, that a Fee-simple doth pass by the intent of the Devisor, but if the devise be to a man, and his Assigns without *Minshew. Cook on Lit. l.2.c.10. Lit. Ten. l.3.c.10. p.123. Sect.557. Cook on Lit. l.1.c.1. sect.1.*

without saying (for ever) the Devisee hath but an estate for life.

If a man devise Land to one *de sanguini suo*, that is a Fee-simple, but if it be *semini suo*, it is an estate tail.

Fulbecks prepar. Id. ib. If a man devise an house furnished, the household stuff passeth, but not the wine that is within the house, because by common intendment a house is not furnished by Wine.

Fulbecks parallel. By the Common Law, if a man devise the third part of his goods to his Wife, it shall be so rated as they were at the time of the death of the Testator, though a man may not grant or give Lands to his Wife during the coverture, because they are but one person in Law; yet he may devise his Lands to his Wife, to have in Fee-simple, or otherwise, because such device taketh no effect till the death of the Devisor, and then they are not one person.

Lit. l. 2. c. 10.

Ployden p. 413. The intent of the Devisor shall be observed for he shall be accounted *inops consilii*, because that wills are most often made when men ly in extremity and want counsell. If a man make divers wills and Testaments, yet the last Device and Will made by him shall stand, and the other are void.

Exceptio. If a man of sound memory make two Testaments, *viz.* one Testament in the sixth year of our Lord the King which now is, and the other Testament in the eighth year of the same King, and after the Testator languishing in his bed, and being dumb, one man in the pretence of his other neighbours delivers him both the Testaments, and he takes them in his hand, and the other saith unto him, Re-deliver unto us that Testament which now you will shall stand, and be your last Will, and he delivers the Testament with the former date,

Perkins tit. of testam. p. 92. B.

date, and retaineth the other with him, now the Teſtament which is delivered ſhall ſtand, notwithſtanding it hath the former date, and was written before the other.

If one deviſe to an Infant in his Mothers belly it is a good device, otherwiſe it is by feoffement, grant or gift, for in theſe Caſes there ought to be one of ability to take preſently, or otherwiſe it is void. *Termes of Law.*

If a man deviſe Land in certainty, as the mannour of *Dale* or *white Acre*, and he hath no intereſt nor poſſeſſion in them at the time of the making the Will, and after the Deviſor doth purchaſe it, in ſuch Caſe it ſhall paſs to the Deviſee, for then it ſhall be taken that his intent was to purchaſe it, as it is ſaid, 39 *H.*6.13.

The Device of Tenant for term of life or Tenant in dower of corn growing at the time of their death is good.

If a man be ſeiſed of a houſe, and poſſeſſed of divers heirlooms, that by Cuſtom have gone with the houſe from Heir to Heir, and by his Will deviſeth away the heirlooms, this device is void, for the Will taketh effect after his death, and by his death the heirlooms by antient cuſtom are veſted in the Heir, and the Law preferreth the cuſtom before the Device. *Cook on Lit. l.3.c.3. ſect.287.*

So if the Lord ought to have a Herriot when his Tenant dieth, and the Tenant deviſeth away all his good, yet the Lord ſhall have his Herriot for the reaſon aforeſaid.

DEVIT.

Devit, in Latin *Jus*, in Engliſh Right, it is found in the Law ſix manner of waies, *viz.*

1. *Jus recuperandi.*
2. *Jus Intrandi.*

3. *Jus habendi.*
4. *Jus retinendi.*
5. *Jus recipiendi.*
6. *Jus poſſidendi.*

All theſe ſeverall ſorts of Rights following the relations of their Objects are the effects of Civil Law.

DISCRETION.

Diſcretion, is a knowledg or underſtanding to diſcern between falſhood and truth, right and wrong, ſhadows and ſubſtance, equity and colourable pretences, and not to do according to their wills and private affections, for as one ſaith, *Talis diſcretio diſcretionem confundit.*

Cooks 5 Rep Rooks caſe.

DISCONTINUANCE.

Diſcontinuance, is a word compounded of *de* and *continuo*, for *continuare* is to continue without intermiſſion. Now by addition of *de* (*Euphonie gratie dis* to it) which is *privative*, it ſignifieth an intermiſſion.

Cook on Lit. l. 3. cap. 11. ſect. 592.

DISPARAGEMENT.

Diſparagement, is a ſhame, diſgrace, or villany done by the Guardian in Chivalry, to his ward in Chivalry, being within age by reaſon of his marriage. Of ſuch diſparagements there be four kinds.

Termes of Law.

The firſt, *Propter vitium animi*, as an ideot *non compos mentis*, a Lunatick:

The ſecond, *Propter vitium ſanguinis*, as

1. A Villain.
2. *Burgenſis*, a man of trade, as an Haberdaſher, or Draper, this agreeth with the Civil Law, *Patricii cum Plebe matrimonia ne contrahant.*
3. The Son or Daughter of a perſon attrainted of treaſon, or felony, albeit pardoned, for the blood is corrupted.

Cook on Lit. l. 2. c. 4. ſect. 188.

4. An

4. An alien or child of an alien.

The third, *Propter vitium corporis*, as

1. *De membris*, having but one hand, one eye.
2. Deformity, as to look a squint, a cripple, halt, lame, decrepit, crooked.
3. Privation, as blind, deaf, dumb.
4. A horrible disease, as leprosie, palsie, dropsie.
5. Great and continual infirmities, as a consumption.
6. Impotency to have a child in respect of age, tender years, or for natural disability.
7. Deflowred.

The fourth kind of disparagement was *propter jacturam privilegii*, as to marry the heir to a widow, whereby he should by reason of the bigamy have lost the benefit of his Clergy whereby he might save his life, but now this is taken away by the Statute, it must be *competens maritagium absque disparagatione.*

DISSEISIN.

Disseisin, is a wrongfull putting out of him that is actually seised of a Freehold. All lawfull acts which a disseisor or abator doth is good, and therefore if a disseisor or abator indow a feme which hath title of Dower, this is good and shall bind the disseisee. *Cook on Lit. lib. 3. c. 8. sect. 475. Cooks case of executors. 5 Rep.*

DISTRESS.

Distress, is a French word, in Latin it is called *districtio, sive angustia*, because the cattel distreined are put into a streight which we call a Pound. It is a maxime in the Law, that no distress can be taken for any services that are not put into certainty, as a man may hold of his Lord to shear all the Sheep depasturing within the Lords Mannor, and this is certain enough, albeit the Lord hath sometimes a greater number, and sometimes *Cook on Lit. l. 2. c. 6. sect. 136.*

times a leſſer number there, and yet this incertainty being referred to the Mannor which is retained, the Lord may diſtrein for this incertainty.

One may diſtrein any where *intra fedum*, ſo that it be not in the High-way nor Church-yard.

Of what things a diſtreſs may be taken.

A diſtreſs muſt be,

1. Of a thing, whereof a valuable property is in ſome body, and therefore Dogs, Bucks, Conies, and the like that are *feræ naturæ* cannot be diſtreined.

Cook on Lit. l.1.c.7. ſect.58.

2. Although it be of valuable property as a horſe, (yet when a man or woman is riding on him) or an Ax in a mans hand cutting of wood and the like, they are for that time priviledged, and cannot be diſtreined.

3. Valuable things ſhall not be diſtreined for Rent, for benefit and maintenance of Trades, which by conſequent are for the Common-wealth and are there by Authority of Law, as a horſe in a Smiths Shop ſhall not be diſtreined for the rent iſſuing out of the ſhop, nor the horſe in the Hoſtry nor the materials in a Weavers Shop for making of cloth, nor cloth or Garments in a Taylors Shop, nor ſacks of Corn or Meal in a Mill, nor in a Market, nor any thing diſtreined for *dammage feaſant*, for it is in the cuſtody of the Law.

4. Nothing ſhall be diſtreined for rent that cannot be rendred again in as good plight, as it was at the time of the diſtreſs taken, as Sheaves or Shocks of Corn cannot be diſtreined for rent, but for *dammage feaſant* they may. But Carts with Corn may be diſtreined for rent, for they may be ſafely reſtored.

5. Beaſts belonging to the Plow *averia carucæ* ſhall not be diſtreined, for no man ſhall be diſtreined by the Inſtruments of his Trade or profeſſion,

session, as the Ax of a Carpenter, or the Books of a Scholar, but goods or *animalia otiosa* may be distrained. If the distress be of utensils of houshold or such like dead goods, which may take harm by wet or weather, or be stolen away, there he must impound them in a house or other Pound covert within 3 miles in the same County.

6. Furnaces, Cauldrons or the like fixed to the Freehold, or the doors or windows of a house, or the like, cannot be distrained.

7. Beasts that escape may be distrained for rent, though they have not been *levant* and *couchant*, he that distrains any thing that hath life must impound them in a lawfull pound within three miles in the same County.

The Common Law is, men cannot distrein for rent or service in the night, as is adiudged in the 12 of *E.* 2. *tit.* distress, but for *dammage feasant* he may distrein in the night for necessity of the Case, for otherwise peradventure he shall not distrein *omnino*, for before the day they may be taken or stray out of his Land. *Cook 7 Rep. cases upon the Statute and 2 Rep. Macballyes Case, and on Lit. l. 2. c. 12.*

A grand distress is that which is made of all the goods and Chattels which the Party hath within the County.

DIVORCE.

Divorce, is so called either *a diversitate mentium* of the diversity of minds of those that are married, because such as are divorced, go one a diverse way from the other, or from the verb *diverto* which signifieth to return back because after the Divorce between the Husband and the Wife, he returneth her again to her Father or other Friends, or to the place from whence he had her. *Ridly of the Civil Law. Cook on Lit.*

There are divers causes for which the Husband and the Wife may be divorced.

1. *Causa*

Buries case 5 Rep.

1. *Causa præcontractus*, therefore if a man marry wish a woman precontracted and hath issue by her, this issue in Law, and in truth bears the firname of his Father: but if after the Husband and the Wife be divorced for the pre-contract, there the issue hath lost his firname, and is become a Bastard *& nullius filius.*

2. *Causa frigiditatis*, therefore if a man be married to a woman, and after they are divorced *causa frigiditatis*, and then the man taketh another Wife, and hath issue by her, yet this issue is lawfull, because that a man may be *habilis & inhabilis diversis temporibus. Semper præsumitur pro legitimatione filiorum & filiatio non potest probari.*

3. *Causa impubertatis*, or *minoris statis*, and in this case if two be married *infra annos nubiles*, and after the full age divorce is had between them this dissolves the marriage.

Divorce is two-fold.

Cook on Lit. l. 3. c. 5. sect. 380. and 7 Rep. Kennes case.

1. *A vinculo matrimonii, causa præcontractus, causa metus, causa impotentiæ seu frigiditatis, causa affinitatis seu consanguinitatis*: all which are causes of divorce preceding the marriage.

2. *A mensa & thoro*, as *causa adulterii*, which dissolves not the marriage *a vinculo matrimonii*, nor bars the Wife of dower, for it is subsequent to the marriage.

DOMINICUM.

Dominicum, is a word forensale of many significations, amongst the French is called *Domanium*, amongst the Italians *demanium*, and here with us *demaine*, which some erroneously call demeane or demesne, as if it came of the French word demesne, i. e. *sui ipsius proprium*, and not of the Latin word *Dominicum.*

Dominicum, saith *Bracton*, *accipitur multipliciter.*

ber. *Est autem dominicum quod quis habet ad mensam: & proprie sunt* Boardlands *Anglice i.e. dominicum ad mensam*, and are such lands which are properly cultivated for the maintenance of the Family, as the demaines of a Mannor, &c. and it is of the like signification amongst the French, as appears by *Choppinus lib.1.tit.1.S.6. de demanio regis. Primis (inquit) Sceptris addictum fuerit in necessarios Regiæ mensa aulæque sumptus.* *Bract.l.4. tract.3.c.9. n.5.*

Dominicum is sometimes taken *pro terris in villenagium concessis* as *Bracton ibidem, item dicitur villenagium, quod traditur villanis, quod quis tempestivè & intempestivè resumere possit pro voluntate sua & revocare.*

Dominicum is sometimes taken *pro libero tenemento*, and this acceptation, as saith *Bracton*, is threefold, *viz.*

1. *Cum quis habet liberum tenementum, & alius usum fructum.*
2. *Cum quis habet liberum tenementum, & alius custodiam.*
3. *Cum quis habet liberum tenementum, & alius curam.*

Dominicum generally (as saith *Bracton*) is when a man hath Lands in fee to him and his heirs or to him and his successors.

In Dominico seisitus is when a man hath Lands or tenements for life at the least, *Ita quod Assisum novæ desseisinæ habere possit si ejectus fuerit.*

Dominicum Bannum is a proclamation or edict by the King.

DOOMES-DAY.

Lambert in his perambulation of Kent.

Doomes-day, Book is so called, because (as *Matthew Paris* saith) it spared no man, but judged all

all men indifferently, as the Lord in that great day will do.

Camb. Brit. *Liber Judiciarius, quem librum librum censualem, Angliæ notitiam, Angliæ commentariæ censuales, acta publica & Angliæ lustrum nominare placet.*

Liber Domes Dei *varie appellatur, viz.* Censualis Angliæ, Rotulus Wintoniæ, Liber Wintoniæ: Angliæ notitia & Liber Judiciarius, *nec mirum in Anglici enim Regni Archivis augustissimum & antiquissimum inter omnia ibidem Crinelia monumentum prostat unde ejusdem Regni antiqua politia antiquarum legum & vetustissimarum consuetudinum veræ Origines & solidissima fundamenta petenda sunt continentur iste ingens duobus Tomis sive voluminibus thesaurus, & in ipsos scaccarii magni Angliæ fisciclavibus summa cum vigilantia & cautela reponitur Dominus Simonds Deus in Epistola manuscripti istius præfixa.*

DOWER.

Cook on Lit. *li. 1. cap. 5. sect. 36.*

Dower, in the Common Law, is taken for that portion of Lands or Tenements, which the Wife hath for term of her life of the Lands or Tenements of her Husbands after his decease, for the sustenance of her self, and the nurture and education of her Children.

Dower is of five sorts or kinds, *vix.*

1. Dower *per legem commnnem.*
2. Dower *per consuetudinem.*
3. Dower, *ex assensu patris.*
4. Dower *ad ostium Ecclesiæ.*
5. Dower, *de la plus baile.*

To the consummation of Dower three things are necessary, *viz.* marriage seisin, and the death of her Husband. *Id. ib.* & Binghams *Case 2 Rep.*

Vi

Ubi nullum matrimonium, nulla dos.

Dos *is derived* ex

donatione, & eſt quaſi donarium, *becauſe the Law it ſelf giveth it to her.*

Of a Caſtle that is maintained for the neceſſary defence of the Realm, a woman ſhall not be indowed, becauſe it ought not to be divided, and the publick ſhall be preferred before the private. But of a Caſtle that is only maintained for the private uſe and habitation of the owner, a woman ſhall be endowed.

A woman may be endowed of the third part of the profit of a Dove-houſe, of the third part of a piſcary, *viz. tertium piſcem, vel jactum retis tertium.* The ſureſt endowment of Tythes, is of the third Sheaf, for what Land ſhall be ſown is uncertain.

If the Wife be paſt the age of nine years at the death of her Husband, ſhe ſhall be endowed of what age ſoever her Husband be, albeit he were but four years old, for *conſenſus, non concubitus facit matrimonium*, and a Woman cannot conſent before twelve, nor a man before fourteen, yet this inchoate, and imperfect marriage (from the which either of the Parties at the age of conſent may diſagree) after the death of the Husband ſhall give dower to the Wife, and therefore it is accounted in Law after the death of the Husband, *legitimum matrimonium* a lawfull marriage, *quoad dotem.* If a man taketh a Wife of the age of ſeven years, and after alieu his Land, and after alienation the Wife attaineth to the age of nine years, and after the Husband dieth, the Wife ſhall be indowed, for albeit ſhe was not abſolutely dowable at the time of the marriage,

yet

yet she was conditionally dowable, *viz.* she attained to the age of 9 years, before the death of the Husband: for by his death, the possibility of dower is consummate. So it is if the Husband alien his Land, and then the Wife is attainted of Felony, now is she disabled, but if she be pardoned before the death of the Husband, she shall be indowed.

Id. sect. 53. By the Custom of Gavel-kind, the Wife shall be indowed of the moity, so long as she keep her self sole and without Child, which she cannot wave, and take her thirds for her life. For, in that case *consuetudo tollit communem legem.*

And as Custom may enlarge, so may Custom abridge dower, and restrain it to a fourth part.

Id sect. 35. Albeit the Wife be an 100 years, and the Husband at his death was but 4 or 7 years old, so as she had no possibility to have issue by him, yet seeing the Law saith, that if the Wife be above the age of 9 years at the death of her Husband, she shall be endowed, and that women in antient times have had Children at that age, whereunto no woman doth now attain, the Law cannot judg that impossible, which by nature was possible. And in my time, a woman about threescore years old hath had a Child, *& ideo non definit in jure*, and the Husband at such tender years, hath *habitum*, though not *potentiam*; therefore his Wife shall be endowed.

Dower is favoured in respect of the Widowhood and desolateness of the woman whose Husband is deceased.

Cook on Lit. Fulbecks prepar. It is commonly said, Three things are favoured in Law, Life, Liberty, Dower. With the Civilians, Dower may be in goods, and not in Lands, yet

yet here in *England* it muſt be in Lands and not in goods.

If a woman go away from her Husband with an Adulterer, and will not be reconciled, ſhe loſeth her Dower by the Statute of *Weſtminſter* 2. C. 34.

Sponte virum mulier fugiens, & adultera facta.
Dote ſua careat, niſi ſponſo ſponte retracta.

DRUNKENNESS.

Drunkenneſs, For being drunk a man ſhall forfeit 5 s. or ſit ſix hours in the Stocks, for tipling 3 s. 4 d. or ſit four hours in the Stocks, the Conſtable for not executing it forfeits ten Shillings, proof of one witneſs is ſufficient. Any one Juſtice of Peace hath power to convince an Offendor of drunkenneſs. *An. 4. Jac. 5. c. made perpetuall by 21. Jac. 7. 6.*

DURESSE.

Dureſſe, is where one is kept in Priſon or reſtrained from his liberty contrary to the order of the Law. It is alſo an exception in pleading to avoid the Deed, which a man was enforced to ſeal to ranſome himſelf from an unlawfull captivity. *Vide* new B. of Put *Verbo dureſſe.* Ex duritia *of ſtraight imprisonment or hard intreaty. Doderidge.*

E.

ECCLESIA.

Fitz. Nat. Brev. 32. c.

Ecclesia, this word in the Common Law, is most commonly used for a place wherein Baptism, and the Sepulture of mens bodies is celebrated, and *Fitzherbert* saith, by this word *Ecclesia* is meant only a parsonage, and therefore if a presentment be made to a Chappel, as to a Church, by the name of the word *Ecclesia*, this doth change and metamorphize the nature of it, and maketh it presently a Church.

Ecclesiastical persons are,

Cook on Lit. l. 2. c. 6. sect. 133.

1. Regular, so called, because they live under certain rules, and have vowed three things, true obedience, perpetuall chastity, and wilfull poverty, when a man is professed in any of the orders of Religion, he is said to be a man of Religion, or religious, of this sort are Abbots, Priors and the like.

2. Secular, which because they live not under certain rules of some of the said orders, nor are voluntaries, they are for distinction sake called secular, as Bishops, Deans and Chapters, Arch-deacons, Prebends, Parsons, Vicars, *&c.*

ELECTION.

Terms of Law.

Election, is when a man is left to his own free will, to take or to do one thing or another, which he pleaseth.

Election

Election may be of

1. Things, as if a man ſhould pay a ſumme of Money, or elſe a Horſe or a Hawk.
2. Of perſons, as if he ſhould pay it to *J. S.* or *J. N.* *Fulbecks prepar.*
3. Of places, as if he ſhould pay it at *London* or at *Lincoln.*
4. Of the time, as the firſt day of *April*, or the ſecond day of *May.*

In caſe an election be given of two ſeverall things, alwaies he which is the firſt agent, and which ought to do the firſt act, ſhall have the Election. As if a man granteth a Rent of 20 s. or a robe to one and to his heirs, the Grantor ſhall have the election, for he is the firſt agent by payment of the one or delivery of the other. So if a man maketh a Leaſe rendring a Rent or a Robe, the Leſſee ſhall have the election *cauſa quâ ſupra.* *Cook on Lit. l.2.c.12. ſect.219.* But if I give unto you one of my Horſes in my Stable, there you ſhall have the election, for you ſhall be the firſt agent by taking or ſeiſure of one of them. And if one grant to another twenty loads of Hazill, or twenty loads of Maple to be taken in his wood of *D.* there the Grantee ſhall have election, for he ought to do the firſt act, *ſc.* to fell and take the ſame.

When the thing granted is of things annuall, and are to have continuance, there the election remaineth to the Grantor as well after the day as before, otherwiſe it is when the things are to be performed *vnicâ vice.* And therefore If I grant to another for life an annuity or robe at the feaſt of Eaſter, and both are behind, the Grantee ought to bring his Writ of annuity in the disjunctive, for if he bring his Writ of annuity for the one only and recover, this judgment ſhall determine his election for ever, but if I contract with you to pay

unto you 20 s. or a robe at the feast of Easter, after the feast you may bring an Action of Debt, for the one or the other.

If a Wife be indowed *ex assensu patris*, and the Husband dieth, the Wife hath election either to have her dower at the Common Law, or *ex assensu patris*, if she bring a Writ of Dower at the Common Law and count, albeit she recover not, yet shall she never after claim her dower *ex assensu*, &c.

Dyer fol. 18.104. *A.* covenanteth to pay *B* a pound of Pepper or Saffron before Whitsuntide, which of them he will pay, but if he payes it not before the same feast, then afterwards it is at the election of *B* to have his action for which he pleaseth, either of the Pepper, or of the Saffron.

So if a man giveth to another his Horse or *21 H. 7. 19.* Cow, the Donee may take the one or the other at his election, but if it was that he will give it in the future tense, there the Donee cannot take the one nor the other, for then the Election is in the Donor.

If a Justice of Peace directeth his Warrant to a Constable, to bring the party apprehended *Cook l. 5. Rep. fol. 59* before him or another Justice, it is in the Election of the Constable to go to what Justice he pleaseth.

ELEGIT.

Cowel Instit. Elegit, *est nomen Brevis, sic dictum ab hoc verbo* (*Elegit*) *in eodem comprehenso.*

EMPARLANCE.

Cowels Interpreter. *Emparlance*, cometh of the French word (*parler*) and signifieth a desire or petition in Court, of a day to pause what is best to do.

ENDICT-

ENDICTMENT.

Endictment, signifieth in Law an accusation found by an enquest, of twelve or more upon their oath, and the accusation is called *endictamentum*, and as the appeal is ever at the suit of the party, so the endictment is alwaies at the suit of the King, and his Declaration. *Some derive it from the word* ἐνδεικνυμι *to accuse.*

To make a good endictment it is necessary to put in the day, year, and place, when and where the felony is done. *If it be uncertain, it is not good.*

It ought to be certain also in the matter, as appears. *P. 8. E. 4 f. 3.* where a Bailiff was endicted, because he took one for suspicion of felony, and after *eum felonicè, & voluntariè ad largum ire permisit*, and did not shew in certain for what suspicion of felony, so when one is endicted that he made an hundred shillings of Alchymy *ad instar pecuniæ Domini Regis*, and alledged not what money it was, groats or pennies: but in case a man be slain, and he is so mangled in the visage that one cannot know him, but the party which killed him is well known, there is no reason he should escape punishment, therefore although no appeal lie against him in this case, yet and Endictment lies, and he shall be endicted, *quòd interfecit quendam ignotum*, the same Law is if one be endicted that he stole the goods *cujusdam ignoti*, or *bona cujusdam personæ*, the reason is, because the Endictment is not his which was the owner of the goods, but is the suit of the King, which is to have the goods, if none claim them. *Stamford pl. of Cr. l. 2. c. 30.* *Stam. ubi supra.*

An Endictment ought to express in certain, as well in what part the mortall wound is, as the profundity and latitude of it, and therefore it was moved that such an Endictment, *quòd unam*

Brook's abr. 4 Rep. cases of Appeals and Indict. *plagam mortalem dedit circiter pectus*, was insufficient, because altogether uncertain, for it might be in the neck or belly, but it was good Law, saith Sir *Edward Cook*, *in Tounes Case, l.* 4. *circiter pectus* is uncertain and insufficient amongst the Cases of appeals and Indictments.

Cook 7 Rep. Calv. Case. Endictments of treason and of all other things are most curiously and certainly penned.

That Endictment is not good which ought to have an argument or implication to make it good, therefore that is not a good Endictment, if it be *quod furatus est unum equum*, and saith not *felonice*, and yet it is implyed in this word, *furatus est*, so if for Rape the Endictment be *quòd eam carnaliter cognovit*, without saying *rapuit*, this is not good; if one be endicted *super visum corporis*, before the Major of *London*, without adding this word Coroner, this is not good, and yet he which is Major of *London* is alwaies Coroner; and therefore it is implyed. If one be endicted *quòd felonicè abduxit unum equum*: this is not good without saying *cæpit & abduxit*, for it may be, that it was delivered to him, and so he leadeth him, in which Case it is not felony.

Stamford pl. of Cr.

Vi & armis must be in all Endictments of treason, murder, felony, trespass, else it is not good. D. and Student. c. 5. 4.

In the Endictment it shall be supposed, that a man such a day and place with force and arms, that is, with staves, swords and knives feloniously stole the Horse, against the Kings peace, and that form must be kept in every Endictment, though the felon had neither sword nor other weapon with him yet this is no untruth in the Jury, for the form of an Endictment is, *inquiratur pro Domino Rege, si à tali die & anno apud talem locum vi & armis*, viz. *gladiis*, &c. *talem equum talis hominis cæpit.* The twelve men are only charged with the effect of the Bill, that is, whether he be guilty of the felony or not,

nor, and not with the form, and when they say *billa vera*, they say true, as they take the effect of the Bill to be, for though there be false Latin in the Bill, and the Jury saith *billa vera*, yet their verdict is true.

An Endictment of murder found in this sort that *Eliz. fuit in pace quousque* A. *vir.* 5. *Præfat. Eliz. de Pin. com.* S. yeoman did kill her, is good; for the addition yeoman must of necessity refer to the Husband, because a woman cannot be a yeoman, but an Endictment *quousque Alicia S. de Pin. in com. S. uxor* J. S. Spinster is not good against *Alice S.* for there Spinster, being an indifferent addition, both for man and woman, must refer to *J. S.* which is the next antecedent, and so the woman hath no addition. So if an endictment against *J. S. serviens J. P. de D. in com. Mid. Butcher.* This is not good, for servant is no addition, and Butcher referreth to the Master, which is the next antecedent. Ad proximum antecedens fiat relatio.

If a man take a Coat-armour which hangs over a dead mans Tomb in a Church, the Endictment must be *bona executorum* of the dead man, but if a Gravestone be taken away, the Endictment must be *bona Ecclesiæ*. *Lambert. Eirenarch.* 494, 495.

ENFRANCHISEMENT.

Enfranchisement, is when a man is incorporated into any society or body politick.

It is a more generall word then manumission, for it is more properly applied to a Villain, and therefore every manumission is an enfranchisement, but every enfranchisement is not a manumission. *Cook on Lit. p.* 137.

ENTRUDER.

Entruder, An abator is he that entreth into Land void by the death of a Tenant in Fee, and an entruder is he that entereth into Lands void by the death of a Tenant for term of life or years.

EQUITY.

Equity, is the correction of a Law generally made in that part wherein it faileth; when an act of Parliament is made, that whosoever doth such a thing, shall be a felond, and shall suffer death, yet if a mad man or an infant of young years that hath no discretion do the same, they shall be no felons, nor suffer death therefore.

Ad ea quæ frequentius accidunt jura adaptantur.

There is a general prohibition in the Laws of *England*, that it shall not be lawfull for any man to enter into the Freehold of another without authority of the owner, or the Law, but yet it is excepted from the said prohibition by the Law of reason, that if a man drive beasts by the highway, and the beasts happen to escape into the corn of his neighbour, and he to bring out his beasts that they should do no hurt, goeth into the ground and fetcheth out the beasts, there he shall justifie the entry into the ground by Law. Also notwithstanding the Statute of *Edw.* 3. made the 14 year of his reign, whereby it is ordained that no man upon pain of imprisonment should give any alms to any valiant begger, that is well able to labour. Yet if a man meet with a valiant begger in so cold weather, and so light apparell, that if he have no clothes he is likely to die, and he giveth him apparell to save his life, he shall be excused.

D. and Student. c. 16. If he be commited for felony. Plowden

Breaking of prison is felony in the prisoner himself by the Statute *de frangentibus prisonam*, yet if the prison be burnt, and they which are therein

therein shall break prison for the salvation of their lives, this shall be excused by the Law of reason, so to save my life I may kill another which assaults me. *term. Hil. in quarto. Ed. 6. Renig. against Fogassa.*

There was a Law amongst the Romanes, that every one that scaled the walls in the night should be condemned to death, and one in the night scaled the walls in times of warre to deserv the enemies to the Romanes, and he, by the judgment of the Senate was not only discharged of death, but had a great reward for it, and yet he had broken the words of the Law, but not the intent, as the Sage Fathers of the Senate judged.

ESCAPE.

Escape, is where one that is arrested cometh to his liberty before that he is delivered by award of any Justices, or by order of Law. If the arrest of him that escaped were for felony, then that shall be felony in him that did voluntarily suffer the escape, and if for treason, then it shall be treason in him, and if for trespass, then trespass. If murder be made in the day, and the murderer be not taken, then it is an escape, for the which the town where the murder was done shall be amerced. *Stamford. pl. of Cr.*

If a man be robbed in the day, and the thief escape, and be not taken within half a year after the robbery, the Town or hundred shall answer it to the party robbed, if he have made hue and cry. *Id. pl. of Cr. l. 1. c. 33. L. Dyer. Term. Hill. an. 4. Reg. Eliz.*

The Township shall be amerced for an escape, if it was *tempore diurno*, although the murder was committed in the Town-field, or in a Lane, but it seemeth reasonable, that complaint be made to the Justices.

Although

Although the priſoner whic'h eſcapes be out of the view, yet if freſh ſuit be made, and he be re-priſed *in recenti inſecutione*, he ſhall be in execution, for otherwiſe at the turning of a corner, or by an entry of an houſe, or by any other ſuch means the priſoner may be out of view.

Cook Rigeways Caſe. 3 Rep.

If a Sheriff or Bailiff of a Franchiſe aſſent, that one which is in execution, and under their cuſtody ſhall go out of Gaol for a while, and then return, although that he return in the time, yet this is an eſcape, for the Sheriff or Bailiff ought to guard him *in ſalva & arcta cuſtodia*, and the Statute of *Weſtminſter* c. 11. ſaith *quòd carceri mancipentur in ferris.* So that the Sheriff may keep them which are in execution in iron and fetters, till they have ſatisfied their Creditors.

Cook Baytons Caſe. 3 Rep.

Where the Sheriff dieth, and one in execution breaketh the Gaol, and goeth at large, this is no eſcape, for when a Sheriff dieth, all the Priſoners are in the cuſtody of the Law, untill a new Sheriff be made.

If a woman be Warden of the Fleet, and a priſoner in the Fleet marrieth her, this ſhall be judged an eſcape in the woman, and the Law judgeth the priſoner to be at large.

Plowd. Commen. Plato's Caſe.

ESCHEAT.

Eſcheat, Eſcheats happen two manner of waies *Aut per defectum ſanguinis*, as if the Tenant dies without iſſue, *aut per delictum tenentis*, that is for felony, *eſcheta* is derived of the French word *eſchier accidere*, for an eſcheat is a caſuall profit *quod accidit Domino ex eventu & ex inſperato* which happeneth to the Lord by chance, and unlooked for, in which Caſe we ſay the Fee is eſcheated.

Cook on Lit. p. 31 & 492.

Eſcheats by Civilians are called caduca.

Thoſe

Thoſe which are hanged by martiall Law, *in furore belli*, forfeit no Lands, for eſcheat for felony is three manner of waies.

1. *Aut quia ſuſpenſus per collum.*
2. *Aut quia abjuravit regnum.*
3. *Aut quia ut legatus eſt.*

The Father is ſeiſed of Lands in Fee holden of *J. S.* the Sonne is attainted of high Treaſon the Father dieth, the Land ſhall eſcheat to *J. S. propter defectum ſanguinis*, becauſe the Father dieth without heir, and the King cannot have the Land, becauſe the Sonne never had any thing to forfeit, but the King ſhall have the eſcheat of all the Lands whereof the perſon attainted of high Treaſon was ſeiſed, of whomſoever they were holden. *Cook on Lit. l. 1. ſect. 4.*

ESCHEATOR.

Eſcheator, cometh from this word Eſcheat, he is ſo called becauſe his Office is to enquire of all caſuall profits, and to ſeiſe them into the Kings hands, that they may be anſwered to the King. *Id. l. 2. c. 5. ſect. 130.*

ESTATE

Eſtate, is the title or intereſt that a man hath in Lands or Tenements. Status dicitur à ſtando *becauſe it is fixed and permanent.* *Cook on Lit.*

In the Law any Eſtate for life being an Eſtate for Freehold is a higher and greater Eſtate then a leaſe for years, though it be for a thouſand or more, which never are without ſuſpicion of fraud, *Cook on Lit. p. 46.*

ESSOIN.

Eſſoin, *Eſſonium*, and ſometimes *exonium*, and ſometimes without *x* or *s* is a word forenſall and cometh of an obſolete French word *eſſonier*, or *exonier*, to excuſe and free from care, from the word *ſoingnire*. It is an excuſe made for the Tenant

nant or defendant who would not appear, and be admitted in reall actions, or to Suiters in Court baron for five cauſes.

See Cooks 2 part of Inſtit. c. 12.

1. *De malo via ſive veniendi*, where the Tenant would not come in reſpect of ſome impoſſibiliry, or durſt not in regard of ſome eminent danger, and this is called *eſſonium commune.*
2. *De malo lecti*, where ſome diſeaſe hindereth, which according to its nature giveth longer or ſhorter day, *Glan. cap.* 19.
3. *Tenus mare*, which is caſt on the behalf of the Tenant when he is beyond the Seas, and this is for fourty daies at leaſt, *Glanvillus cap.* 25.
4. *Servitium Regis*, when the Tenant is in the Kings ſervice, and then the plea reſteth without day untill he retur', *Glanvillus cap.* 27.
5. *De terra ſancta*, where the Tenant or Defendant was in pilgrimage to the holy Land, or as voluntier againſt the Saracens, and then a year and a day at the leaſt was allowed by the Eſſoin.

Eſſoin is ſometimes taken for any excuſe of Aſſize *in Clarendon tempore.* H. 2. *Forenden. p.* 549. *Nulli liceat hoſpitari aliquem extraneum ultra unam noctem in domo ſua, niſi hoſpitatus ille eſſonium rationabile habuerit.*

ESTOPPEL.

Cook 2 Rep. Goddard's Caſe.

Eſtoppell is when one is concluded and forbidden in Law to ſpeak againſt his own act or deed, yea though it be to ſay the truth, and therefore Jurors cannot be eſtopped, becauſe they are ſworn to ſay the truth.

Eſtoppels are three waies effected,

1. By matter of Record.

2. By

2. By bare writing.
3. By Fact, *in pais.*

ESTOVERS.

Eſtouers, are nouriſhment or maintenance, it is alſo uſed for certain allowances of wood to be taken out of another mans wood, whence the Engliſh call houſhold goods or furniture, and the matter of which other things are made ſtuff *Spelman Gloſſar.*

à Gallico eſtouer, id eſt fovere materiam exhibere.

It is the allowance to a felon in priſon out of his own goods, *in vitæ ſuſtentationem.*

See Cooks 2 part of Inſtit. c. 7.

ESTRAY.

Eſtray, is where any beaſt or cattell is in any Lordſhip, and none knoweth the owner thereof, then it be ſhall ſeized to the uſe of the King, or of the Lord that hath ſuch eſtray by the Kings grant, or by preſcription. And if the owner come and make claim thereto within a year and a day, then he ſhall have it again, or elſe after the year, the property thereof ſhall be to the Lord, ſo that the Lord make proclamation thereof according to the Law.

Vide voſſium de vitiis Serfmonis. *l.* 2. *c.* 7. Bracton *l.* 3. *c.* 18. Animalia vagrantia *Bracton or* vacantia *as others call them*, quia Domino vacare dechiſe where they are found, but they muſt firſt bent. *The Common Law extendeth* derelictum *both to that which is voluntarily forſaken, and to that which is waived and left by neceſſity.*

Goods waived, the Civilians call *derelicta*, and *Bracton* ſaith *quod olim fuerint Inventoris de Jure naturali, & jam efficiuntur Principis de Jure gentium.* But now Kings have granted this Prerogative unto their Subjects within their liberties, ſo that waives and eſtrayes are the Lords of the Franby him be cauſed to be cryed in Markets near about him, or elſe the year and day runs not to the prejudice of him that loſt them.

ESTREATS.

ESTREATS.

Eſtreats, are ſo called from the word *extracta* becauſe they be ſhort notes or memorials extracted or drawn out of the Records by the Clerk of the peace, and by him indented and delivered ſunderly to the Sheriff, and to the Barons of the Exchequer, bearing this or the like Title, *Extracta finium amerciamentorum foris factorum ad generalem Seſſionem pacis*, &c. *coram*, &c. for the forme of the making hereof, thence is full direction given to the Clerk of Eſtreats by the Stat. 7 *H.* 4 *S.*

EXCHANGE.

Exchange, is where a man is ſeiſed of certain Land, and another man is ſeiſed of another Land, if they by a deed indented, or without deed (the Lands being in one County) exchange their Lands, ſo that each of them ſhall have the others Lands to him ſo exchanged in fee, fee tail or for term of life, that is called an exchange, and is good without livery and ſeiſin.

It behoveth alway, that this word exchange be in the deed, or elſe nothing paſſeth by the deed, except that he have livery and ſeiſin, for the word *excambium* only maketh an Echange, as the words *liberum maritagium* only do make frank marriage. Every exchange ought to be made by this word *excambium*, or by another word of the ſame effect, as *permutatio* Perkins.

Both the things exchanged ought to be *in eſſe* at the time of the Exchange, and therefore an exchange of Land for Rent granted *de novo* is not good, but an exchange betwixt a Rent and a Common which are *in eſſe* at the time of the exchange is good, and ſo it is of Land and Rent.

If two Parſons of ſeveral Churches change their Benefices, and reſign them into the hands of the ordinary to the ſame intent, and the Patrons make their preſentations accordingly, and the one of the Parſons is admitted, inſtituted and inducted, and the other parſon is admitted and inſtituted, but dieth before induction, the other Parſon ſhall not retain the benefice in which he is inducted, for the exchange is not perfected, becauſe it is not executed.

EXECUTION.

Execution, Execution for debt is four-fold,

1. Of goods only by *Fieri facias*, or of the moity of Lands by *Elegit*, or upon the recognizance of a Statute; or of the Body by *capias ad ſatisfaciendum*.

EXECUTOR.

Executor, is when a man makes his Teſtament and laſt Will, and therein nameth the perſon that ſhall execute his Teſtament, then he that is ſo named is his Executor, and is as much in the Civil Law, as *hæres deſignatus*, or *teſtamentarius*, as to debts, goods and chattels of the Teſtator. *An Executor of a laſt Will and Teſtament executing and performing the Will of the dead Judg Doderidge.*

An Executor is after three ſorts.

1. *Executor teſtamentarius a teſtatore conſtitutus.*
2. *Executor legalis*, That is the Ordinary.
3. *Dativus* the Adminiſtrator, *Cook* 8 *Rep.* Sir *John Nedhams* Caſe.

An Executor or Adminiſtrator ought to execute his Office, and Adminiſter the goods of the dead lawfully, truly and diligently. *Debts due by obligation, ſhall be payed by Executors before debts*

1. Lawfully in paying all the duties, debts and legacies, in ſuch precedency and order, as they ought to be paid by the Law.

2. Truly,

by single contract, and they before Legacies

2. Truly, to convert nothing to his own use, for an Executor or Administrator hath not goods of the dead to his own use, but *in anothers right*, and to others uses, and he ought not to practice or devise any thing to hinder the Creditor of his debt, but truly to execute his Office according to the trust reposed in him.

Cook 9 Rep. Duchons Case.

3. Diligently, *quia negligentia semper habet comitem infortunium.*

Cook 8 Rep. Tamors Case.

If Tenant for life soweth the ground and dieth, his Executors shall have the Corn, because his estate was uncertain, and determined by the Act of God.

Cook on Lit. p. 55.

Cook 8 Rep. Nedhams Case.

De bonis defuncti trina debet esse dispositio.

1. *Necessitatis, ut funeralia.*

2. *Utilitatis*, that every one shall be paid in such precedency as ought to to be.

3. *Voluntatis*, as Legacies.

Executor de son tort, is he that takes upon him the Office of an Executor by intrusion, not being so constituted by the Testator or deceased, nor (for want of such constitution) constituted by the ordinary to administer how farre we shall become lyable to Creditors *vide* 43 *Eliz. cap.* 8. *Dyer* 166. 105. 6. *Dyer* 166. *Belknap.* 50. *Ed.* 3. 9. 13, 14 *Eliz. Dyer* 305, 306.

Smiths Commonwealth of England.

Quod non est debitum vel quod est ultra debitum, vel ante tempus quod est debitum.

EXIGENT.

Exigent, by which one is outlawed, not rendring himself, as ye would say *exactus* or *actus in exilium*

EXTORTION.

Extortion, is the unlawfull taking by any Officer, by colour of his Office, any money or valuable thing of or from any man, either that is not due, or more then is due, or before it be due. It is largely taken for any oppression, by power, or by colour, or pretence of right, from the verb, *extorquco.*

Cook on Lit. l. 3. c. 13. sect. 701.

EVI-

EVIDENCE.

Evidence, This word in legall underſtanding, doth not contain matters of Record, as Letters Patents, Fines, Recoveries, Inrolements, and the like, and Writings under Seal as Charters and Deeds, and other Writings without Seal, as Court Rols, Accounts and the like, *inſtrumenta*, but in a large ſenſe it containeth alſo *Teſtimonia* the teſtimony of Witneſſes, and other proofs to be produced and given to a Jury, for the finding of any iſſue joyned between the Parties, and it is called *Evidence*, becauſe thereby the point in iſſue is to be made evident to the Jury, *Probationes debent eſſe evidentes*, id eſt, *perſpicuæ & faciles*. *Cook on Lit. l. 3. c. 8. ſect. 485.*

A man ſeiſed of Lands in fee hath divers charters Deeds and Evidences, and maketh a feoſment in fee either without warranty, or with warranty only againſt him and his heirs, the Purchaſer ſhall have the Charters, Deeds and Evidences as incident to the Lands and *ratione terræ*, that he may the better defend the Land himſelf, having no Warranty to recover in value, for the Evidences are as it were the ſinews of the Land, and the feoffer being not bound to Warranty, hath not uſe of them, but if the feoffer be bound to warranty, then he ſhall have all Deeds and Evidences, which are material, for the maintenance of the Title of the Land, but others which concern the poſſeſſion the feoffee ſhall have. *Cook on Lit. lib. 1. c. 1. ſect. 1.*

F

FARM.

FArm,(in Latin *firma*) cometh from the Saxon word *Feormian* to feed or relieve, for in ancient time, upon Leases were reserved Corn, Cattell,

Pl. Com. 169. Victuals, &c. which was called *Feorme*: so that although now by agreement such Rent is turned into Money, yet it retains the name still, and as well the Land so leased as the Rent is called Farm, and the occupyers of such Land Farmers. A Farm in *Lancashire* is called a Fermeholt, in the North parts a Tacke, and in *Essex* a Wike, and was anciently called *fundus*. By the grant of Farmes will pass Leases for years, as also Houses, Lands, &c.

Br. Grant. 155.

FEALTY.

In the civil Law is called fidelitas. *Cook l. 4. Berits case, and on Lit. l. 2. c. 2. sect. 91.*

Fealty, it is the most generall service in the Common Law, for it is incident to every Tenure, unless it be a Tenure in Frankalmoigne, it is also the most sacred, because it is done upon oath, and the reason wherefore the Tenant is not sworn, in doing his homage to his Lord, is because no subject is sworn to another subject, to become his man of life and member, but to the King only, and that is called the oath of allegiance, *homagium ligeum*, and those words for that purpose are omitted out of fealty, which is to be done upon oath.

FEE-SIMPLE.

Littleton and Cook in Lit.

Fee-simple, Fee cometh of the French *Fief*, that is *prædium beneficiarum*, and legally signifieth Inheritance.

FEU-

FEUDUM.

Feudum, is a barbarous word, but had his original (as *Isidore* saith) from *fœdus*, and is to be interpreted *tanquam fœdum*, that is, a thing covenanted between two, others deduce it from the word *fides* as it were in Latin *Fidcum* and by a more pleasant pronuntiation *Feudum*, whereupon such as are Feudataries to others, are called in Latin *Fideles*, because they owe faith an allegiance to such whose Feudataries they are. *Ridleys view of the Civil Law.*

Nec Gothicam Feudi vocem abhorream; Ea significatur genus clientelæ, quo vel prædium, cui quam datur, ut & ampliorem agnoscant caput, honorem, at vel dignitas, vel vectigal ipsi, & posteri, beneficii pro patrono, ejusque fortunas defendant, Vossius De vitiis Sermonis l. 1. c. 7.

It is called *Fee-simple*, because it is descendible to his heirs generally that is simply without restraint to the heirs of his body. *Cook on Lit. l. 1. c. 1.*

A man may have a Fee-simple in 3 kinds of hereditaments, *viz.* Reall, personal and mixt, reall as Lands and Tenements.

2. Personall, as if an annuity be granted to a man and his heirs.

3. Mixt hereditaments, as when the King creatteth an Earl of such a County, to have the dignity to him and his heirs, this dignity is personall, and also concerneth Lands and Tenements.

Every man that hath a Fee-simple, hath it either by right or by wrong, if by right, then he hath it either by purchase or descent. If by wrong, then either by disseisin, intrusion, abatement, or usurpation. *Id.* ubi supra.

FEE.

Fee or Inheritance is either,

1. Corporeall, as Lands and Tenements which lie in livery, theſe may paſs by livery by Deed or without Deed.

Hæreditas corporata.

2. Incorporeall, which lyeth in grant, and cannot paſs by livery, but by Deed, as advowſons, Commons.

Hæreditas incorporata.

FEES.

Fees, there are divers Opinions about Knights fees. Some ſay that a hide or a plow of Land contains 10 Acres, and that 80 hides or 800 Acres of Land, make a Knights Fee, and others hold that 680 Acres of Land make this, but a Knights Fee is properly to be eſteemed according to the quality and not the quantity. In antient time men thought 20 l. of Lands was ſufficient to maintain the degree of a Knight, alſo every Plow of Land was antiently worth four Nobles *per annum*, and this the life of a yeoman, *& ex duodecim carucatis conſtabat unum* * *fœdum militare*, which amounts to 20 l. *per annum*.

A plow or hide of land which is all one, is as much as one may plow in one year.

Cook 9 Rep. Lowescaſe.

FEOFFEMENT.

Feoffement, is the antient and moſt neceſſary conveyance, becauſe it is ſolemn and publick, and alſo becauſe it cleareth all diſſeiſins, abatements, intruſions, and other defeaſible eſtates, where the entry of the Feoffer is lawfull, which neither fine, recovery, nor bargain and ſale by Deed indented and inrolled doth, *Ephron* infeoffed *Abraham*. *Gen.* 23.

It is derived of fœdum quia eſt donatio fœdi.

Cook on Lit. l. 1. *c.* 1. *ſect.* 1.

If a contract of Matrimony be between a man and a woman, yet one of them may infeoff the other, for yet they are not one perſon in the Law, inſomuch as if the woman die before the eſpouſals celebrated between them, the man to whom ſhe

Perkins tit. Feoffments.

was contracted shall not have her goods as her Husband, but the woman may well make her Testament without his consent. It hath been held if a man be contracted to a woman, *& postea cognovit eam carnaliter*, and after he infeof her of a plow of Land, and put her in seisin, and after marry her *in facie Ecclesiæ*, that this feoffment was void, because it was done *post fidem datam, & carnalem copulam, & sic tanquam inter virum & uxorem*, insomuch as marriage followed, but at this day if such a feoffment be made, it is good enough. *Id. Ib.*

FELONY.

Felony, is so called either of the Latin word *fel*, which is in English gall, or of the antient English word *fell* or fierce, because it is intended to be done with a cruell, bitter, fell, fierce or mischievous mind. *Significat quodlibet capitale crimen felleo animo perpetratum*, in which sense murder is said to be done *per felloniam*, and in antient times this word (*felonice*) was of so large an extent, as it included high treason, and by pardon of all felonies, high treason was pardoned. *Termes of Law.* Ideo dicta est felonia, quia fieri debet felleo animo. *Cooks 4 R. Bedlies Case.*

A man may have property of some things which are of so base nature, that no felony can be committed of them, and no man shall lose for them life or member, as a Blood-hound and a Mastiff. *Cook on Lit. l. 3. p. 392. Cooks 7 R. Cases of Swans.*

To steal fruit that hangeth on a Tree, to cut down and carry away the Tree it self, is not felony, but these things be part of the Free-hold till they be sever'd, and cannot be reputed for any chattels. But if I gather mine Apples or cut down a Tree of mine own, then may another become a felon by taking away either of them. *But a trespass.*

Felony cannot be comitted by the taking of beasts that be savage, if they be savage and untamed

Stamford pl. of Cr. p.1.c.1. tamed at the time of taking, nor for taking of Doves being out of a Dove-coat, nor for taking of fishes being at large in a River, for such taking is not *contrectatio rei alienæ, sed quæ est nullius in bonis*, but the stealing of a Doe which is tame and domesticall is felony, but as Mr *Stamford* well noteth, it seemeth that he that stealeth it should have certain knowledg that it is tame; but if the Doe be killed, and then stolen, this is certainly felony, saith he. So if one break a Dove-coat, and take out the young Pigeons which cannot go nor fly, this is felony, or steal fish out of a pond or trunk, or young goshawks ingendered in my Park, which cannot go nor fly.

Id. Ib. *Quam varia sunt felloniarum genera, Henricus Spelmannus, eques Auratus in eruditissimo suo Glossario ostendit. Vossius De vitiis Sermonis. l. 2. c. 6.*

The punishment of a felon is grievous.

Quod suspendatur per collum.

1. He loseth his life, his judgment is to hang by the neck untill he be dead.
2. He loseth it in an odious manner, by hanging between Heaven and earth, as unworthy of both.
3. His blood is corrupted and stained that his Children cannot inherit to him nor any other Ancestors.

Cook 4 Rep. Beverlies case, and on Lit.

4. He shall forfeit all his Lands and Tenements which he hath in Fee, and in tail, and for Tenour of his life.
5. All his goods and chattels.

By the Statute, de donis conditionalibus, Lands intailed 6. His Wife shall lose her dower, thus severe it was at the Common Law, that men should fear to commit felony, *ut pœna ad paucos, metus ad omnes perveniat.*

are not forfeited for felony, but for the life of Tenant in Tail the Inheritance is preserved to the issues.

An act *Anno* 21 *Jacobi Regis*, concerning women convicted of small felonies, continued *tertio Caroli cap.* 4. to the end of the first Sessions of the next Parliament.

Whereas women having not the benefit of Clergy, do suffer death for small causes, be it enacted that a woman lawfully convict of felonious taking of any goods above twelve pence, and under ten Shillings value, or as accessary to such offence, the same being not burglary, nor robbery, nor privy stealing from the person (but only such an offence for which a man shall have Clergy) she shall for the first time be branded upon the brawn of the left thumb with a hot iron having a Roman T by the Gaoler in open Court, and further punished by imprisonment, whipping, stocking, house of correction, and for so long time not exceeding a year, as the Judge shall think meet

Vide Statute to continue untill the first Session of the next Parliament

The Civil Laws do judg open theft to be satisfied by the recompence of four-fold, and private theft, by the recompence of double. But the Laws of *England* suffer neither of these offences to be more favourably punished then with the offendors death, if the value of the thing stollen be above twelve pence.

Portescue. de laud. leg Ang.

If a man be adjudged to be hanged, and the Sheriff be commanded that it be executed, and he behead him, this is felony in the Sheriff, because the order of Law is not observed.

Stamf. l. 1. pl. of Cr. c. 4.

FELO DE SE.

If a man of *non sana memoria* give to himself a morrall wound, and before he dieth he become of sound memory, and after dieth of the same wound, in this Case, although he die of sound memory, by reason of his proper stroke, yet because the original cause was committed, being not of sound memory,

Cook 1 Rep. Shellies case.

memory, he ſhall not be *felo de ſe*, becauſe the death hath relation to the original act.

By the common Law if a man kill himſelf he is called *felo de ſe*, and he doth only forfeit his goods and chattels, but not his Lands, neither doth this work corruption of Blood, nor the Wife loſe her Dower, becauſe it is no attainder in deed.

He that is *felo de ſe* ſhall not have Chriſtian buriall, and all his goods and chattels are forfeited to the King, and by his Almner are to be diſtributed to pious uſes (heretofore) *in ſalutem animæ.*

FINE.

Fine, This word (*Finis*) hath divers ſignifi-
Cook 8 Rep. Keechers Caſe. cations in the Law, *quia aliquando ſignificat pretium aliquando pœnam, aliquando pacem.*

For 1. The price or ſumme which is the cauſe of obtaining a benefit, is called a fine: as a fine for alienation for admiſſion to a Copy-hold for obtaining of Leaſes.

2. What the offender gives in ſatisfaction of his offences, is called a fine alſo, and in this ſenſe *dicitur pœna.*

3. The aſſurance which makes men to enjoy their Lands and Inheritance, is called *finis quia finem litibus imponit.*

They are all ſo called, becauſe they are the ends or cauſes of the ends of all ſuch buſineſs.

Of fines taken of Copyholders,
Some be certain by cuſtom,
And ſome be uncertain.

But that fine though it be *incertus*, yet it muſt be *rationabilis*, and that reaſonableneſs ſhall be
Cook on Lit. lib. 1. cap. 9. ſect. 74. diſcuſſed by the Juſtices upon the true circumſtances of the Caſe appearing unto them, and if the Court where the cauſe dependeth, adjudgeth the fine

fine exacted unreasonable, then is not the Copyholder compellable to pay it.

FLIGHT.

Flight, one shall forfeit his chattels upon a *fugam fecit*, notwithstanding that he be acquitted of the same felony, and he shall forfeit them although he have his Charter of pardon for the same felony. One may fly for felony and yet he shall forfeit nothing, as where one is arrested for suspicion of Felony and escapes, yet for this he shall not forfeit his goods, if he were not taken with the manner, or at the suit of the party, or endicted of the same. *Stamford pl. of Cr. l. 3. cap. 2. Stamf. of prero. c. 16.*

When a true man is pursued as a felon, and he flieth and waveth his own goods, these are forfeited, as if they had been goods stollen. *Fatetur facinus, qui judicium fugit.* Those that fly for fear of the offence (we call it a *fugam fecit*) forfeit their chattels. *29 E. 3. 29. 37 H. 8. Stamf. fol. 186. 4.*

FLOATSOM.

Floatsom, is when a Ship is drowned, or otherwise perished, and the goods float upon the Sea, and they are given to the Lord Admiral by his Letters Patents. *Cook l. 5. Sir Henry Constables Case.*

FORCE.

Force, prohibited by the Statutes, must be either *manu forti*, with force or strong hand, or *multitudine*, with multitude of people. *Ubi factum nullum ibi fortia nulla*

The Counsellours and Committers of force are alike punished. *There is a difference in the Common Law betwixt publick and open force.*

FORG-

FORGING.

Forging of *Deeds*, To forge is metaphorically taken from the Smith, who beateth upon his Anvill, and forgeth what fashion or shape he will.

FORMEDON.

Formedon, is so called, because the Writ doth comprehend the form of the gift. There be three kinds of Writs *Formedon*, *viz.*

Cook on Lit. l.3.c.11. Jeff.595.

The first is the descender, to be brought by issue in tail, which claim by descent *per formam doni*.

The second is in the Reverter, which lieth for him in the reversion, or his Heirs or Assignes, after the State tail is spent.

The third is, the remainder which the Law giveth to him in the remainder, his Heirs or Assigns after the determination of the estate tail.

FOUNDATION.

Cook l.10. Rep.

Foundation, the foundation of a Colledge or Hospitall is called, *fundatio*, *quasi fundi datio*, *vel fundamenti locatio.*

FRANCHISE.

An.15. Rich.2. c.4. An.8. Hen.5.

Franchise, is a priviledge from ordinary jurisdiction, and it is called a Franchise Royall in some Statutes, where the Kings Writ runneth not, as when the King granteth to one and his Heirs, that they shall be quit of toll.

FRANKALMOIGNE.

Frankalmoigne, in Latin, *libera eleemosyna*, in English free Alms, is when a man in antient time before the Statute of *quia emptores terrarum*, had infeoffed an Ecclesiasticall person whether regular, as Abbots, Priors, *&c.* or secular, as Bishops, Deans, and Chapters, Arch-Deacons, Prebends, Parsons, Vicars,

Vicars, &c. to have and hold to them and their ſucceſſors, to hold of the feoffer, and his heirs in frankalmoigne.

There is an Officer in the Kings houſe called *Eleemoſynarius*, the Kings *Almner*.

FRANK-TENEMENT.

Frank-Tenement, *Free-hold*, is an eſtate that a man hath in Lands or Tenements, for term of his own life, or of anothers life, in dower or by the courteſie of *England*, and under that there is no free-hold, for he that hath eſtate for years, or holdeth at will, hath no freehold, but they are called chartels.

A Tenement cannot be ſaid to be free-hold, except it touch the earth, and therefore a Chamber built upon a Hall or Parlor, cannot be ſaid to be free-hold, becauſe it cannot be perpetuall, for the foundation may periſh, and therefore it cannot be demanded by plaint or Writ.

Tenant in fee, tenant in tail and for life, are ſaid to have a frank-tenement, a *free-hold* ſo called, becauſe it doth diſtinguiſh it from termes of years, chartels upon uncertain intereſts, Lands in villenage, cuſtomary or copy-hold Lands. *Cook on Lit.*

Free-man. A man may be *liber homo* a *free-man* in *London* three waies. *Cook 8 Rep. Caſe of the City of London.*

1. By ſervice, as he who hath ſerved his Apprentiſhip.
2. By Birth-right, as he which is the Son of a Free-man of *London*.
3. By Redemption, that is, allowance of the Court of the Major and Aldermen.

FRESH-

FRESH-SUIT.

Fresh-Suit, Although the Prisoner which escapeth be out of view, yet if fresh suit be made, and he be taken in *recenti insecutione*, he shall be in execution, for otherwise at the turning of a corner or by entry into a house, or by other means, the the prisoner may be out of view.

Cook 3 Rep. Rigeways Case.

G.

GAVELKIND.

Gavelkind, is a Custom annexed with Lands in *Kent*, by which all the Brethren shall inherit together, as Sisters at the Common Law. It is called *Gavelkind*, either *of give all in*, that is, to all the kindred in one line, according as it is used among the *Germanes*, from whom we Englishmen, and chiefly of *Kent* come, or *of give all kind*, that is, to all the Male-children, for *kind* in Dutch signifieth a Male-child. But now by the Statute 31 *H.* 8 A great part of *Kent* is made descendible to the Eldest Sonne according to the course of the Common Law, because by that Custom, divers antient and great Families after a few descents come to very little or nothing.

Verstegan. de Int.

Lamberts perambul. of Kent Verstegan.

Cook on Lit.

In variis gentes vivos deducitur amnis.
Fit minor, ac unda deficiente perit.

After that *William* Duke of *Normandie* had invaded

invaded and conquered all *England*, *Kent* only excepted, at last also the Kentish men yeilded, but upon condition that they might enjoy their antient customes of *Gavelkind*, which was granted unto them, and since hath continued. *Camd. Brit. and Lamb. perambul. of Kent.*

In *Gavelkind*, though the Father be hanged, the Sonne shall inherit, for their Custom is, *The Father to the bough, and the Son to the plow.* *D. and Student. c. 10.*

The Wife shall have the moity of the Lands of her Husband, so long as she lives unmarried, and of Lands in Gavelkind, a man shall be Tenant by the courtesie, without having of any issue. *Cook on Lit. l. 2. c. 10. sect. 165.*

If a man make a gift intail of Lands in Gavelkind, to a man and his Heirs, Males of his body lawfully begotten, and hath issue Sonnes, in this case all the Sonnes shall inherit, but if a Leate for life be made of Lands in Gavel-kind, the remainder to the right Heirs of *J. S.* and *J. S.* die having issue 4 Sons, in this case the eldest Sonne only shall have the remainder, he only can be a right *Heir* in case of purchase. *Cook 9 Rep. Shelleys Case.*

GENERAL.

Generall, If one speak grosly, it shall be understood *secundum excellentiam*, as of the Feast of *Michael*, it shall be understood of the *Arch-Angel*, as the more worthy and notorious. *Cook 9 Rep. Gregs case.*

GRAND SERJEANTY.

Grand Serjeanty, is where a man holdeth of the King certain Lands, by the service of carrying of his Banner or Launce, or to lead his Hoist, or to be his Carver, or Butler at his Coronation. *So called because it is the most honourable and worthy service that a Tenant may do.*

The Demockes hold a Mannour of Scrivel, by service of *Grand Serjeanty*, *viz.* That whensoever any King of *England* is to be crowned, then the Lord of this Mannour, for the time being, or some one in his Name (if himself be unable) shall come

Camd. in Lincolnshire.

come well armed for the Warre, mounted upon a good horse of service, in the presence of the Soveraigne Lord the King upon his Coronation day, and cause proclamation to be made, that if any man will avouch that the said Soveraign Lord the King, hath not right to his Kingdom and Crown, he will be prest and ready to defend the right of the King of his Kingdom, of his Crown and dignity, with his body against him and all others whatsoever.

GRANGE.

Grange, in legall Latin *Grangea* is a House or Edifice not only where Corn is stored up like as in Barnes, but necessary places for Husbandry also, as Stables for Hay and Horses, and Styes for other Cattle, and by the grant of a Grange, which is often in Conveyances, will pass such places as aforesaid.

GRANT.

Quælibet concessio fortissimè contra donatorem interpretanda est. *Cook on Lit. lib. 3. c. 3. sect. 283.*

Grant. It is a maxim in Law that every mans Grant shall be taken by construction of Law most forcible against himself, which is so to be understood, that no wrong be thereby done, for it is another maxim in Law, *quòd legis construi non facit injuriam.* And therefore if a Tenant for life maketh a lease generally, this shall be taken by construction of Law, an estate for his own life that made the Lease, for if it should be a Lease for the life of the Lessee, it should be a wrong to him in the reversion. So if Tenant in tail make a Lease generally, the Law shall suppose this to be such a Lease as he may lawfully make, and that is for term of his own life, for if it should be for life of the Lessee, it should be a discontinuance, and consequently the state which should pass by construction of Law should make a wrong.

Where

Where the grant is impoſſible to take effect, according to the Letter, there the Law ſhall make ſuch a conſtruction, as the gift by poſſibility may take effect. *Benignè faciendæ ſunt interpretationes chartarum propter ſimplicitatem Laicorum, ut res magis valeat quam pereat*, that the thing may rather be ſtrengthened then void, for if Writs be not formally made, they ſhall abate, which is no greater prejudice, then the purchaſing of a new Writ, but if the Grant be void, the party hath no remedy. *Id. ib.* *Cook 5 Re.*

If two Tenants in common be, and they grant a Rent of 20 s. *per annum* out of their Land, the Grantee ſhall have two Rents of 20 Shillings, becauſe every mans grant ſhall be taken moſt ſtrongly againſt himſelf, and therefore they be ſeverall grants in Law. But if they two make a gift in tail, or Leaſe for life, reſerving 20 s. Rent to them and their Heirs, they ſhall have but one twenty Shillings, for they ſhall have no more then themſelves reſerved, and the Donee or Leſſee ſhall pay but 20 s. according to their own expreſs reſervation. *Cook on Lit. l. 3. c. 9. ſect. 314.*

If a man have five horſes in his Stable, and he give to me one of his Horſes in his Stable, now I ſhall take which Horſe I will. *Perk. of Grants.*

If a man grant an annuity out of certain Land, and he hath no Land at the time of the grant, yet the grant ſhall charge his perſon.

The Law ſaith that benefits from the Crown are *ſtrictæ*, nay *ſtrictiſſimæ interpretationis*, becauſe in ſuch grants ſo much is taken away from the publick (which is chiefly to be tendered) as is imparted to the private.

If a man hath Mines hidden within his ground, and lets his ground and all the Mines with it, the Leſſee may dig for them, for *quando aliquis aliquid concedit*, *Cook 5 Rep. Sanders Caſe.*

Cook on Lit. l. 1. c. 1. sect. 1. *concedit, concedere videtur & id sine quo res ipsa esse non potest.*

The Queen is an exempt person from the King by the Common Law, and is of ability and capacity to purchase and grant without the King.

Fitz. Nat. brev. tit. Common L. 180. B. If a man grant certain Land to one *cum communia in omnibus terris suis*, and express not any certain place, he shall have common in all his Lands, which he had at the time of the grant.

1 Mar. Dy. 91. A man grants all his Trees and wood upon *B.* acre, that may reasonably be spared, this is a void grant, unless it be referred to a third persons judgment, what may be spared.

Cook 9 Rep. Earl of Salops Case. If the King grant to me that I shall not be Sheriff without shewing of what County, this is void for the uncertainty, *quia concessio per regem oportet fieri de certitudine*, but if the grant was *Cook 4 Rep. Browns Case.* *quòd non erit vicecomes alicujus comitatus*, there such a grant is good, when the words of a grant are not sufficient *ex vi termini* to pass the thing granted, but the grant is utterly void, there a *non obstante* connot make the grant good.

Perkins tit. Grants. The Lord Chancellour of *England*, the Justices of the Kings Bench or Common Pleas, and Barons of the Exchequer, cannot grant their Offices over to other persons, nor occupy them by Deputy. If an annuity be granted to me *pro consilio in posterum impendendo*, I cannot grant this, unless it be granted to me and my Assigns.

38 Ed. 3. 6. A Parson may grant to another the moity of his Tythes for years, whether it be Lamb, Wool or Corn, and yet he hath no possession of them, because they are not yet *in esse*. But yet he hath an interest in them, and may grant the moity of them, as well as one may grant to another that it shall

shall be lawfull for him to take every year a Deer or a Hare, or a Cony within his soil, this is a good grant.

H

HARRIOT.

Harriot, in the Saxon tongue is called *Hergeat*, that is, the Lords Beast, for *Here* is Lord, and *geat* is *best*. *Cook on Lit. l.3.cap.3. sect.287.*

Harriot is in two sorts.

1. Harriot Custom, where Harriots have been paid time out of mind by custom, and this may be after the death of the Tenant for life. Harriot is the best Beast (whether it be Horse, Ox, or Cow) that the Tenant had at the time of his death.
2. Harriot service, when one holds by such service to pay Harriot at the time of his death, this is payable after the death of the Tenant in Fee-simple.

For Herriot service the Lord shall distrain, and for Herriot custom, he shall seise, and not distrain. *D. and Student. c.9*

If the Lord purchase part of the Tenancy, herriot service is extinguished, but it is not so in herriot custom *Cooks 8 Re. Talbots Case.*

In 34 *Ed.* 3. it is holden that if any Tenant wh ch holdeth of me by a herriot, alien parcell of Land to another, every one is chargeable to me of a herriot, because it is entire, and if the Tenant purchase the Land again, I shall have of him for every portion a herriot.

Cook on Lit. l.3 c.3. p.185.B.

If the Lord ought to have an Herriot when his Tenant dieth, and the Tenant deviseth away all his goods, yet the Lord shall have his Herriot, for the Law preferreth the Custom before the devise.

HEIR.

Cook on Lit. lib.1.cap.1. sect.1. Hæres dicitur ab hærendo, quia qui hæres est hæret, id est, proximus est sanguine, illi cujus est hæres.

Heir, in the legall understanding of the Common Law implyeth that he is *ex justis nuptiis procreatus*, for *hæres legitimus est quem nuptiæ demonstrant*, and is he to whom Lands, Tenements, or hereditaments, by the Act of God, and right of blood do descend, of some Estate of Inheritance.

Every Heir is either a Male or a Female, or an Hermophrodite, that is both Male and Female. And an Hermophrodite (which is also called *Androgynus*) shall be Heir, either as Male or Female according to that kind of the sex which doth prevail.

Id. Ib.

Hermaphrodita, tam masculo quam fœminæ comparatur, secundum prævalescentiam sexus incalescentis, and accordingly it ought to be baptised.

Hæres est quintuplex.

1. *Jure proprietatis*, so the eldest Son shall inherit only before all his Brethren.
2. *Jure repræsentationis*, as where the eldest Sonne dieth, his issue shall inherit before the younger Son, he represents the person of his Father.

Cook 3 Rep. Ratcliffes Case.

3. *Jure propinquitatis*, as *propinquus excludit remotum, & remotus remotiorem.*
4. *Jure sanguinis*, so the daughter of the first *venter* shall inherit before the Son of the second.

5. Ratio

5. *Ratione doni*, so the half blood shall inherit, as if a gift be made to one and the Heirs of his body, and he hath issue a son, and a daughter by one *venter*, and a son by another *venter*, the Father dies, and the eldest son enters and dies, the young son shall inherit *per formam doni*, for he claims as heir of the body of the Donee, and not generally as heir of his Brother: otherwise where Land cometh by descent, the rule is *possessio fratris de feodo simplici facit sororem esse hæredem*, but the Brother ought to be in actual possession of the Fee, and frank-tenement, either by his own possession, or the possession of another to make his sister heir, and the reason is, because of all hæreditaments in possession, he which claimeth as Heir, ought to make himself Heir by him that was last actually seised. *Id. Ib.*

Soror est hæres facta, *therefore some act must be done to make her Heir, and the younger Brother is* hæres natus, *if no Act be done to the contrary.*

But if the King by his Letters Patents make a Baron to him and his Heirs, possession in the elder brother of this Dignity cannot make his sister heir, but the brother of the half blood shall inherit, because no possession can be gained of this dignity *per pedis positionem.*

Cook. ubi supra, and Lit. l. 1. sect. 8. quasi pedis positio.

In case of the descent of the Crown, the half blood shall inherit. So after the decease of King *Edward* the sixth, the Crown fell to Queen *Mary*, & p. and from her to Queen *Elizabeth*, both which were of the half blood, and yet inherited not only the Lands which King *Edward*, or Queen *Mary* purchased, but the antient Lands parcell of the Crown also.

Cook. l. 7. of Calv. case. and in Lit. sect. 1. c. 1.

A man that is King by descent of the part of his Mother, purchaseth Lands to him and his heirs,

and dyeth without iſſue, this land ſhall deſcend to the heir of the part of the Mother, but in caſe of a Subject, the heir of the part of a father ſhall have them.

HEREDITAMENT.

Cook Lit. 6. 16.

Hereditament, is a word much uſed in Conveyances, and in grants will paſs whatſoever may be inherited, be it corporeall or incorporeall, reall, perſonall or mixt, and by the grant of hereditament Iſles, Charters, Signioryes, Mannours, Houſes and Lands of all ſorts, Rents, Services, Advowſons, and Commons.

HÆRES.

Cook on Lit. l. 1. c. 2. Cook on Lit. l. 1. c. 1. fol. 1.

Hæres eſt pars anteceſſoris; Therefore if land be given to a man and his Heirs, all his Heirs are ſo totally in him, as he may give the Lands to whom he will; one cannot be heir till the death of his Anceſtor; he is called *Hæres apparens* Heir apparent.

Solus Deus facit hæredes.

Every Heir having Land, is bound by the binding acts of his Anceſtors, if he be named, *qui ſervit commodum ſentire debet & incommodum ſive onus.* Cook on Lit. l. 1. fol. 1.

Cook on Lit. l. 1. c. 1. fol. 1.

A man by the Common Law cannot be Heir to goods or chattels; for *hæres dicitur ab hæreditate.* If a man buy divers Fiſhes, as Carps, Breams, Tenches, and put them into his Pond and dieth; in this caſe the heir ſhall have them, and not the Executors; but they ſhall go with the inheritance, becauſe they were at liberty, and could not be gotten without difficulty, as by nets and other Engines; and otherwiſe it is if they were in a Trunk. Like wiſe Deer in a Park, Conies in a Warren, and Doves in a Dove-houſe, young and old ſhall go to the Heir.

HOTCH

HOTCHPOT.

Hotchpot, is a medling or mixing together, and a partition of Lands given in frank-marriage, with other Lands in fee-simple descended.

It is an old Saxon word, and signifieth a pudding; and the French use Hotch-pot for a commixtion of divers things together. It signifieth here metaphorically *in partem positio*; in English we use to say Hodge-podge, in Latin *farrago* or *miscellaneum*. *Cook on Lit. l.3.c.12. sect. 267.*

HOMAGE.

Homage is,

1. The most honourable service.
2. The most humble service.
1. On part of the Tenant.
   1. The Tenant when he doth his homage is *disinthus*, disarmed, because he must never be armed against his Lord.
   2. *Nudo capite*, bare headed.
   3. *Ad pedes Domini super genua projectus.*
   4. *Ambas manus junctas, inter manus Domini porrigit*, which betokeneth reverence and subjection.
   5. *Per verba omni supplici veneratione plena*, he saith, I become your man.
2. On part of the Lord for three causes.
   1. The Lord doth sit.
   2. He unloseth his Tenants hands between his own, which betokeneth protection and defence.
   3. The Lord sitting kisseth the Tenant. *Cook on Lit. lib. 2. cap. 1. sect. 85.*

Homage, is derived of homo, and is called homage, because when he doth this service, he saith, I become your man, and in English homage is called man-hood; as the manhood of his Tenant, and the homage of his Tenant is all one. Cook on Littleton ibidem.

Cook ubi supra. *Glanvill* saith women shall not do homage, but *Littleton* saith, that a woman shall do homage, but shall not say, I become your woman, but I do to you homage, and so is Glanvill to be understood, she shall not do compleat homage.

HOMICIDE.

Cook on Lit. l. 3. c. 8. *Homicide*, is when one is slain with a mans will, but not with malice prepensed: most properly it is *hominis occisio ab homine facta*.

Bracton saith, it is homicide if one strike a woman great with child, so that she miscarry; *Si puer perium animatum fuerit*, and this agreeth with the Canon and Civil Law, but the contrary is now Law amongst us.

To make it Homicide, it is requisite

1. That the party killed be *in esse*, viz. *in rerum natura*, for if a man kill an Infant in his Mothers Womb, this is no felony, neither shall he forfeit any thing for it, for two Causes.

Stamf. pl. of Cr. l. 1. and Fulton de pace Regis.

1. Because the thing had no Name of Baptism.
2. Because it is hard to judg whether the Infant dyed of the Battery or not, or upon some other cause. *Fitzherbert* puts a stronger case, *viz.* If a man strike another woman great with child with two Infants, so that presently after one of them die, and the other was born and baptized, and two daies after, for the hurt that he had received dieth, and yet it was no felony.

Brooks abr. f. 177. and Stamf.

But if a woman being delivered of a Child doth presently kill it before it be baptized, this is felony in her, though the Child had no Name of Baptism; because the Child was *in rerum*

natura

natura before it was killed, and it is known by whom, and by what means that Child came to his death. *Stamford and Fulton*

Anno primo Jacobi Regis, c. 8. An Act to restrain ſuddain killing and ſtabbing of men done in time of drunkenneſs, rage, and hidden diſpleaſure. Be it enacted that if any ſhall ſtab or thruſt any that hath not a weapon drawn, nor hath firſt ſtricken, and the party dieth thereof within ſix moneths, the offender being thereof convicted by verdict of twelve men, confeſſion or otherwiſe, ſhall ſuffer death, as in caſe of wilfull murder, without benefit of Clergy. This Statute ſhall not extend to killing, *ſe defendendo*, by misfortune or in other manner, then as aforeſaid, nor to man-ſlaughter done in keeping of the Peace, ſo as it be not wittingly under colour of keeping the Peace, nor to any which in correcting Child or Servant ſhall beſide their intent commit man-ſlaughter, this Statute to continue untill the end of the firſt Seſſion of the next Parliament, continued 21 *Jacobi*, *cap.* 28. *& tertio Caroli* cap. 4. to the end of the firſt Seſſion of the next Parliament.

The offender in this caſe ſhall have his Clergy, but ſhall forfeit his goods.

There is Homicide,

1. Of malicious purpoſe, which we call murder.
2. Upon the ſuddain, in a heat and fury of mind, which we term man-ſlaughter. *Delinquens per iram provocatus*
3. Which we call *ſe defendendo*.
4. *Per infortunium*, homicide of a mans ſelf, whereby the offender is called *felo de ſe*. *punivi debet mitius.*

The chief reaſon why ſeipſum

Man-ſlaughter *ſe defendendo*, is where two fight together upon a ſuddain, and before the mortall

defenilendo is not matter of justification, is because Law supposeth it hath a commencement upon an unlawfull cause.

call wound on either party, the one flieth unto the wall or some other place, beyond which he cannot pass, for the safeguard of his life, and the other pursueth him, and he which flieth killeth him that pursueth, this is man-slaughter in his own defence, and the offender in this case shall forfeit his goods.

Quod quis ob tutelam corporis sui ecerit, jure id feciſſe videtur.

HOUSE.

House in a house four things are necessary.

1. *Habitatio hominis.*
2. *Delectatio inhabitantis.*
3. *Neceſſitas luminis.*
4. *Salubritas aeris.*

For hurt made to three of these an Action lieth.

1. Of the habitation of a man, for this is the principall end of a house.
2. For hinderance of his light, for the antient form of an action upon the Case was significant, *quòd meſſuagium horridâ tenebritate obſcuratum fuit.* It is said, *Veſcitur aura ætherea*, and the words *horrida tenebritate* imply the benefit of light, but for a prospect which is a matter only of delight, and not of necessity, no action lies for stopping of this, and yet it is a great commendation of an house, if it have a fair prospect.

Unde dicitur,
Laudaturque domus longos qui proſpicit argos.

3. And if stopping of wholsome air be actionable *à fortiori*, an action lies for corrupting and infecting the air, a lime kill is good and profitable, but if this be erected so near a house that

that none can inhabit there, for the entring of the ſmoke an action will lie, *prohibetur ne quis faciat in ſuo quod nocere poſſit alteri.*

The houſe of every one is to him as his Caſtle and Fortreſs, as well for his defence againſt injury and violence, as for his repoſe, and although that the life of a man be a thing precious and favoured in the Law, ſo that when a man kills another in his own defence, or *per infortunium* without any intent, yet this is felony, and in ſuch Caſes he ſhall forfeit his goods and chattels for the great reſpect that the Law hath to the life of a man. But if Thieves come to ones houſe to rob or murder him, and the owner or his ſervants kill any of the Thieves in defence of him and his houſe, this is not felony, nor ſhall he loſe any thing. *Domus ſua cuique eſt tutiſſimum refugium.*

2. When any houſe is recovered by any reall action or by an *Ejectione firmæ*, the Sheriff may break the houſe, and deliver ſeiſin of poſſeſſion to the Demandant or Plaintiff, for the words of the Writ are, *Habere facias ſeiſinam*, or *poſſeſſionem*, and after Judgment this is not the houſe in right, and judgment of the Law, of the Tenant or Defendant. *Coke 5 part of Rep. Semains Caſe.*

3. In all Caſes where the King is party, the Sheriff (if no door be open) may break the houſe of the party, either to take him or to do other execution of the proceſs of the King, if otherwiſe he cannot enter in it, but before he break it, he ought to ſignifie the cauſe of his coming, and to requeſt him to open the door. For in ſuch Caſe if he break the houſe when he may enter without breaking it (that is upon requeſt made, or if he may open the door without breaking it) he is a treſpaſſer.

The

The preheminence and priviledge that the Law giveth to houſes which are for habitation of men is great.

1. A houſe ought to have the precedency in a *præcipe quod reddat*, before Lands, Medowes, Paſtures, Woods, for ones Houſe is his Caſtle.

Cook 11. Rep. Bowls Caſe.

2. The Houſe of a man hath a priviledge to protect him againſt an arreſt, by force of a proceſs of the Law, at the ſuit of the Subject.

3. It was reſolved that thoſe that dig for ſalt-peter ſhall not dig in the manſion houſe of any Subject, without his aſſent, for then he nor his Wife, nor his Children, cannot be in ſafety in the night, nor his goods in his Houſe preſerved from Thieves.

4. He that kills one which will rob and ſpoil him in the houſe ſhall forfeit nothing.

Lambert.

If a man (hearing that another will fetch him out of his houſe and beate him) do aſſemble company with force, it will be no unlawfull aſſembly, for his houſe is his hold and Caſtle.

The Kings Officer may break an houſe for Felony, or ſuſpicion of felony.

1. For the Common-wealth, for it is for the publick good to take Felons.

2. In every Felony the King hath an intereſt, and where he hath an intereſt, the Writ is, *Non omittas propter aliquam libertatem*, the priviledge of the houſe will not hold againſt him. *Cook 5 Rep.* Caſes of executions.

For the good of the Common-wealth, an houſe ſhall be pulled down, if the next be fired. Judge *Doderidge.*

HUE.

Cowel Inſtit.

Hue and *Crie* is derived of two French words, *Huyer & Cryer.*

In

In legall understanding Hue and Crie is all one: In antient Records they are called *Hutesium & clamor.* *See Cook's 3 part of Institutes* c.52.

This Hue and Crie may be by Horn and by Voice. He that goeth not at the Commandement of the Sheriff or Constable upon Hue and Crie, shall be grievously fined and imprisoned. *Cooks 2 part of his Instit. c. 9.*

HUNDRED.

Hundred is so called, either because they were at the first an hundred Towns and Villages in each Hundred, or because they did find the King to his Wars an hundred able men. *Smiths Commonwealth of England.*

Between *Milborne* and the Inhabitants of the Hundred of *Dunmow* in *Essex*, it was adjudged, for a robbery done in the morning *ante lucem*, the Hundred shall not be charged, because this robbery was done in the night, for there can be no negligence in them for not keeping the Country in the night, neither can they make pursuit after the Offenders. But if one kill one in a Town in the day, *viz.* as long as it is full day light, and he which kils him escape the Town where the Felony was, the Town shall be amerced for it, but not if such a Felony or Murder had been done in the night. *Cook 7 Re. Cases on the Statute. Hundredum sæpe legas in Anglicorum Regum diplomatibus, & eius gentis scriptoribus. Significat verò* partem comitatus, *in qua habitarent centum Regii fide jussores. Explicatius plenè de eo Spelmannus. Vossius. De vitijs Sermonis l.2.c.9.*

In Towns or Cities which are inclosed, the Gates ought to be shut from sun-setting to sun-rising, and if in any such Town or City any murder or man-slaughter be done in the day or in the night, and the Offender escape, such a City or Town shall be amerced.

I.

IDEOT,

Stamf. pra. reg. Reg. c. 9

IDeot, the words of the Statute be, *Rex habebit cuſtodiam terrarum fatuorum naturalium*, by which it appeareth that he muſt be a fool naturall, that is a fool *à nativitate*, for if he were once wiſe, and became a fool by chance or miſfortune, the King ſhall not have the cuſtody of him.

Fitz. N.b. fol. 232.

The King is Protector of all his Subjects, and of all their goods, Lands and Tenements, and therefore ſuch as cannot govern themſelves, nor order their Lands and Tenements, his Grace (as a father) muſt take upon him to provide for them, that they themſelves, and their things may be preſerved.

Cook 4 Rep. Beverlies Caſe.

Ideot, is a Greek word, and properly ſignifieth a private man, which hath not any publick Office. Amongſt the Latins it is taken for *illiteratus, imperitus*, amongſt our Lawyers, for *non compos mentis*, in our common Engliſh ſpeech, called a natural fool. *Fatuus à fando, quia inepta loquitur.* If one have ſo much underſtanding, as he can meaſure a yard of cloth, number twenty pence or rightly name the dayes in the week, or beget a child, ſon or daughter, he that can do ſo, ſhall not be accounted an Ideot or natural fool by the Laws of the Realm.

Fitz. Herb. Nat. brev. p. 233.

Term. of Law.

Stamf. Pra. rog. Reg. c. 9

Cook 4 Rep. Beverlies Caſe.

An Ideot naturall in an Action brought againſt him, ſhall appear in his proper perſon, but he who is become *non compos mentis*, ſhall appear by

by his Guardian, if he be of full age.

JETSAM.

Jetsam, is when a Ship is in perill to be drowned, and to disburden the Ship, the Mariners cast the goods into the Sea; It cometh of the French word *Jetter*, to cast out; and sometimes signifieth the Admirals prescription, and sometimes the thing cast out of the Ship, and prescribed in.

IGNORANCE.

Ignorance, There is a difference in the Law between *ignorantia* and *ignoranter*. Such an Act is properly said to be done *ex ignorantia*, where involuntary ignorance is the cause of it, as if a child or mad man kill a man, but if a drunkard kill a man, this act is said to be done *ignoranter*, but he is the cause of his own ignorance. *Plowd. Comment. p. anu. E. 6. Reniger against Fogassa.*

IMPRISONMENT.

Imprisonment, is the putting of any person from his own liberty, into the custody of the Law, to answer to that which is objected; and therefore to break the prison is to fly from the tryal of the Law, and is adjudged a publick Felony, if he were imprisoned for felony, otherwise not, as the *statute de frangent. prisonam.* Out of this one fact, there groweth sometime a treble offence and felony, *viz.* 1. In the prisoner himself, which is most properly called the breaking of prison. 2. Another in him that helpeth the prisoner to get away, which is commonly termed Rescuss. 3. A third, in the Officer or party whatsoever, by whose wilfull default he is suffered to go; and that is termed an escape. *Lamb. Just. of Peace.* *Id. ib.*

A man imprisoned by process of Law, ought to be kept *in salva & arcta custodia*, and by the Law ought not to go out though it be with a Keeper,

Cook on Lit. l.3. c.7. sect.438. per, and with the leave and sufferance of the Gaoler; but yet imprisonment must be *custodia non pœna*, for *carcer ad homines custodiendos, non ad puniendos dari debet.*

Cook. Lechfords Case. 8 Rep. He which is imprisoned by Judgment of the Law, ought to be kept *in salva & arcta custodia*, *salva* because he ought to be in a prison so strong, that he cannot escape, and *arcta* in respect that he ought to be kept close without conference with others, or intelligence of things at large.

INCIDENT.

Incident, is a thing appertaining to or following another, as a more worthier principall: The incident shall pass by the grant of the principall, but not the principall by grant of the incident. *Accessorium non ducit, sed sequitur suum principale.*

Cook on Lit. l.2.c.12.

Incidents are,

1. Separable, as rents incident to reversions, which may be severed.

Id.l.2. c.5. 2. Inseparable, as fealty to a reversion or Tenure

INCUMBENT.

Incumbent, cometh of the verb *incumbo*, that is to be diligently resident, and when it is written

Cook on Lit. l.2.c.11. sect.180. encumbent, it is falsly written, for it ought to be incumbent, and therefore the Law doth intend him to be resident on his Benefice.

INDUCTION.

Induction, The Arch-deacon is to put in the Minister in possession by delivering the Ring of the Church-door unto him, and ringing of Bells, which is called an Induction, and that being done, the party becometh an incumbent.

A man having a Benefice with Cure, at the value

value of ten pounds or more, receives another Benefice with Cure, and is inducted into this new; the first is void, *ac si esset per mortem & resignationem*, by Statute 21 *Hen.* 8. *L. Dyer.* The Statute is of the yearly value of eight pound.

INDENTED.

Indented, It cannot be a Deed indented, unless it be actually indented; for albeit the words of the Deed be *hæc indentura*; yet if it be not indented, indeed it is no Indenture; but if the Deed be indented, albeit the words of the Deed be not *hæc indentura*, yet it is an Indenture. *Cook on Lit. l.2.c.12.*

Deeds indented are called by severall Names, as *Scriptum indentatum, charta indentata, indentura, literæ indentatæ.* An Indenture is a Writing containing a Conveyance, Bargain, Contract, Covenants or Argreements between two or more; and is indented in the top or side answerable to another that comprehendeth the self-same matter. It is called an Indenture, because each part in the top or side, *Similiter scinditur in morem dentium, ut pares esse cognoscantur.* *sect.217. & l.3.c. 5. sect.370.* *Cowels Interpr. Jur. Angl.*

INFANT.

Infant, An Infant of eight years age or above, may commit Homicide, and shall be hanged for it, *viz.* If it may appear (by hining of the person slain, by excusing, or by any other act) that he had knowledg of good and evil, and of the danger of the offence; for here *malitia supplebit ætatem.* Yet *Cook* upon *Littleton* sect. 405. saith, That an Infant shall not be punished untill the age of fourteen, *viz.* the age of discretion.

Before the age of one and twenty years a man or woman is called an Infant in the Law. *Cook on Lit. lib.1. c.21. & l.2.c.28.*

IN-

INHERITANCE.

Inheritance, A man may have an Inheritance in title of Nobility and Dignity three manner of waies; that is, 1. by creation, 2. by descent, 3. and by prescription: by creation two manner of ordinary waies, 1. by Writ, 2. and Letters Patents. Creation by Writ is the antienter way; yet that by Letters Patents is the surer. If he be generally called by Writ to the Parliament, he hath a Fee-simple in the Barony without words of Inheritance. But if he be created by Letters Patents, the state of Inheritance must be limited by apt words, or else the Grant is void: But a man must not only have the Writ delivered to him, but sit in Parliament, to make him noble that way; and thereupon a Baron is called a Peer of Parliament: Therefore a Duke, Earl, &c. of another Kingdom are not to be sued by these Names here, for they are not Peers of our Parliament.

Cook on Lit. l. 1. c. 1. sect. 9.

Some have an Inheritance, and have it neither by descent, nor properly by purchase, but by creation; as when the King doth create any man a Duke, a Marquess, Earl, Viscount, or Baron to him and his Heirs, or to the Heirs Males of his body, he hath an Inheritance therein by creation.

Id. ib.

INNE.

Inne, Common Inns are instituted for passengers and wayfaring men, for the Latin word for an Inne is *diversorium*, because he that lodgeth there *est quasi diverters se à via*, and therefore if a neighbour which is not a traveller, as a friend at the request of the Inkeeper lodge there, and his goods are stolen, he shall not have an Action, for the Writ is, *ad hospitandos homines per partes, ubi hujusmodi hospitia existunt, transeuntes, & in ijsdem*

Cook 8 Rep. Calyes Case.

iſdem hoſpitantes. The Innekeeper ſhall anſwer for nothing, which is out of his Inne, but only for thoſe things which are *infra hoſpitium*, the words are *eorum bona, & catalla infra hoſpitia ida exiſtentia*, and therefore the Horſe which at the requeſt of the owner is put to paſture, being not *infra hoſpitium*, the Innekeeper is not bound by the Law, to anſwer for him, if he be ſtolen, but if the owner require not this, but the Innekeeper of his own head puts the Horſe of his Gueſt to the paſture, he ſhall anſwer for him if he be ſtolen, *Hoſpes eſt, quaſi hoſpitium potens.* The hoſt ſhall not be charged except there be ſome default in him or his ſervants. The words are *ita quod per defectum hoſpitatorum, ſeu ſervientium ſuorum, hoſpitibus hujuſmodi damni non eveniat*, and although the gueſt deliver not the goods to the Hoſt to keep, nor acquaint him with them, yet if they be ſtollen, the Hoſt ſhall be charged, but if the ſervant of the gueſt, or he which comes with him, or he which deſires to be lodged with him, ſteal his goods, the Hoſt ſhall not be charged, for it was the fault of the gueſt to have ſuch a companion or ſervant, but if the Hoſt appoint one to lodge with another, he ſhall anſwer for him, as appears.

The Hoſtler requires his gueſt to put his goods in ſuch a chamber, under lock and key, and then he will warrant them, otherwiſe not, the gueſt ſuffers them to be in outward Court, where they were ſtolen, the Hoſt ſhall not be charged for the fault that is in the gueſt. *Cook ubi ſupra.*

If one bring a bag or cheſt of Evidences or Obligations into an Inne, and they be ſtolen through the default of the Hoſt, the Innekeeper ſhall anſwer for them,

If a man lodg with any (which is not an Innekeeper, upon requeſt, and he be robbed in his houſe, by his ſervants, which lodgeth him or any other, he ſhall not anſwer for it, for the words of the Writ are *hoſpitatores qui communia hoſpitia Tenent.*

Proof of one witneſs ſufficient. See the Statute primo Caroli c. 4.

Anno 21 *Jacobi*, Any perſon whatſoever found tipling in any Inne or Alehouſe, to be adjudged within the compaſs of the Statutes againſt drunkenneſs.

An Alehouſe-keeper convict of offence againſt the Statute, to be diſabled to keep an Alehouſe for three years after.

INSTITUTION.

Cook on Lit.

Inſtitution, is when the Biſhop ſaith, *Inſtitute rectorem talis Eccleſiæ, cum cura animarum, & accipe curam tuam & meam.*

Cook 4 Rep. Digbies caſe.

Every Rectory conſiſts of a ſpiritualty, and temporalty, and as for the ſpiritualty, *viz. cura animarum*, he is a compleat Parſon by Inſtitution, but as for the temporalties, as the glebe land, he hath no Frank-tenement in them, till Induction.

INTRUSION.

Cook on Lit. l. 2. c. 8. ſect. 475.

Intruſion, properly is when the Anceſtor died of any eſtate of Inheritance expectant upon an eſtate for life, and then Tenant for life dieth, and between the death and entry of the heir, a ſtranger doth interpoſe himſelf, and intrude.

JOINT TENANTS.

Joint-tenants, are ſo called, becauſe Lands or Tenements are conveyed to them joyntly, *conjunctim feoffati*, or *qui conjunctim tenent*, and are diſtinguiſhed from ſole or ſeverall Tenants, from Parceners

Parceners, and from Tenants in common, and anciently they were called *participes*, and *non hæredes*. And these joynt-tenants must joyntly implead, and joyntly be impleaded by others, which property is common between them and coparceners, but Joynt-tenants have a sole quality of survivorship, which coparceners have not. Survivourship is not proper to them *quavis modo*, for there may be joynt-tenants, though there be not equall benefit of survivour on both sides. As if a man letteth Lands to *A* and *B*. during the life of *A*. If *B*. dieth, *A*. shall have all by the Survivour, but if *A*. dieth, *B*. shall have nothing. *Cook on Lit. l.3 c.3. sect.277.* *Id. ib. sect.280.*

If one joynt-tenant should have more profit then another, the society should be *Leonina*, rather the devouring of Lions, then the dividing of men, or according to the Proverb, *a man should divide honey with a Bear.*

IOINTURE.

Jointure, it is so called, either because it is granted *ratione junctura in matrimonio*, or because the Land in Frank-marriage is given joyntly to the Husband and Wife, and after to the heirs of their bodies, whereby the Husband and the Wife be made joynt-tenants during the Coverture. *Cook l.3. Rep. Marquess of Winchesters Case.*

IUDGES.

Judges, All their Commissions are bounded with this express limitation, *Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ.*

The Judge at his creation takes an Oath, that he shall indifferently minister justice to all men, as well foes as friends, that shall have any suit or plea before him, and this shall he not forbear to do, *Fortescue de laudibus legum Angliæ.*

do, though the King by his Letters, or by expreſs word of mouth ſhould command the contrary. He ſhall alſo ſwear that from that time forward, he ſhall not receive or take any Fee or penſion, of any man but of the King only, nor any gift, reward, or bribe of any man having ſuit or plea before him, ſaving meat and drink, which ſhall be of no great value.

It is a Maxim in the Law, *Aliquis non debet eſſe judex in propria cauſa.*

Henry the fourth of that name, when his eldeſt Son the Prince was by the Lord Chief Juſtice, for ſome great miſdemeanours, commanded and committed to priſon, he thanked God that he had both a Son of that obedience, and a Judge ſo unpartiall, and of ſuch undaunted courage.

De laudibus leg. Ang. 53. c.

Forteſcue ſpeaketh of a Judge complaining of a judgment given againſt a Gentlewoman of *Salisbury*, who being accuſed by her own man, without any other proof, for murdering her Husband was thereupon condemned and burnt to aſhes: the man who accuſed her being within a year after convict for the ſame offence, confeſt that his Miſtris was altogether innocent of that cruell fact, whoſe terrible death he then (though over late) grievouſly lamented: but this Judge (ſaith the ſame Authour) *ſæpius mihi faſſus eſt, quod nunquam in vita ſua animum ejus de hoc facto purgaret.* He himſelf often confeſſed unto me, that he ſhould never during his life be able to clear his conſcience of that fact.

Septimo Hen. 4. the King demands of *Gaſcoin* Juſtice if he ſee one in his preſence kill *J. S.* and another (which was not culpable) was indicted of this before him, and found guilty of the ſame fact, what he will do in this caſe, who anſwered that

that he ought to respite the judgment against him, because he knew the contrary, and to relate the matter fully to the King, to procure him a pardon; for there he cannot acquit him, and give judgment of his private knowledg, for the Judges have a private and judiciall knowledge, of their private knowledg they cannot judge, but may use their discretion. But where they have a judiciall knowledg, there they may and ought to give judgment according to that. As if one be arraigned upon an Indictment for any offence which is pardoned by Parliament, there they ought not to proceed in this, nor to give judgment if he be found guilty, because it appears to them by their judiciall knowledge, that they ought not to arraign them, and they ought to take knowledge of Statutes, although they be not pleaded.

See the like Case determined by King James in disputations at Oxford. *Rex. Plath* p.109. 113.114. 115. *Plowden. Partridge against Strange.* *fol.83.B.*

JUDGMENT.

Judgment, The censure of the Judges is called *Judicium*, *quasi juris dictum*, the finall saying, judgment and doom of the Law. *Cook.*

Every Judg ought in giving his judgment, to avoid two things.

1. *Precipitationem, quia ad pœnitentiam properat, cito qui judicat.*
2. *Morosam cunctationem*, *viz.* either when the Law is determined, or to make a question in the Law where there is none, to cause delay to the party, which is in effect a denying of justice. *Cook Downams Case. 9 Rep.*

JURATA.

Jurata, A Jury *vox est fori nostri*, and signifies a company of honest and lawfull men, lawfully sworn, to enquire and relate the truth concerning such things as are injoyned them by a Judge

Jurata, *Juratores*, and Jury are ſo called à *jurando*, they are called *in legibus antiquis*, *Sacramentales* à *Sacramento præſtando*, there are divers ſorts of Jurors, according to the variety of antient matters, and the nature of the Courts, of which there are two ſorts more eſpecially eminent, *viz*.

1. *Jurata delatoria*, is which inquires out offenders againſt Law, and preſents their names together with their offences to the Judge, *ut in examen vocati juris ſubeant ſententiam, ſive ad condemnationem, ſive ad deliberationem*, and this is called an Inqueſt, and is two-fold.
   1. *Major*, *cui totius Comitatus luſtratio, ut in Aſſiſis & Seſſionibus pacis, nec non in curia Regii tribunalis demandatur*, and is called the Grand Jury, or grand Inqueſt.
   2. *Minor*, *cui minor juriſdictio, ut unius Hundredi in Seſſionibus pacis creditur*.
2. *Jurata judiciaria*, is that Jury which determineth *de ſumma litis*, or the matter of fact in iſſue before the Judge, doth *punire de jure*, and this *Jurata*, or Jury is alſo two-fold.
   1. *Civilis*, which takes cognizance of civil Actions between Subject and Subject.
   2. *Criminalis*, which takes cognizance of Actions Criminal *de vita & membris* and is alwayes betwixt the King, and the Subject, commonly called the Jury of life and death.

The determination of the Jury is called ſometimes *duodecim virorum judicium*, for that the number of men to make up a Jury are for the mo

moſt part but twelve, which cuſtom for the triall of matter of fact, is very antient, and was uſed amongſt the Saxons, *ut è LL. Etheldredi in frequenti Senatu apud Panatingum editis cap. 4. refert Lambertus, in ſingulis (inquit) Centuriis Comitia ſunto, atque liberæ conditionis viri duodeni ætatè ſuperiores una cum præpoſito ſacra tenentes juramento ſe adeo virum aliquem innocentem, haud damnaturos, ſontemve abſoluturos*, The like to which memorial is, *in conſulto de monticulis Walliæ ſub ævo ejuſdem Etheldredi cap. 3. de pignore ablato viri duodecim jure conſulti (ſeu legales) Anglis & Wallis jus dicunto ſc. Anglis ſex Wallis totidem*, which we call *medietas linguæ* which is a priviledge or courteſie afforded by the Law to ſtrangers, *aliens* whoſe King is in league with us, in ſuits about things perſonall, namely that the Jury ſhall conſiſt of ſix Engliſh, and ſix of the aliens own Countrey-men, if ſo many can be found, if not aliens of any other Country, who by league are capable.

The Office of the Jury is to find *veritatem facti*, and of the Judge to declare *veritatem juris*.

It is a Maxim in the Law, *quòd ibi ſemper fieri debet triatio, ubi juratores meliorem poſſunt habere notitiam.* *Cook 4 Rep. Caſes of Appeals and indict*

Their finding is called *veredictum, quaſi dictum veritatis.*

By the Law of *England* a Jury after their evidence given upon the iſſue, ought to be kept in ſome convenient place, without meat or drink, fire or candle, which ſome Books call an impriſonment, and without ſpeech with any unleſs it be the Bailiff, and with him only if they be agreed. *Cook on Lit. l. 2. c. 5. ſect. 366.*

After they be agreed, they may in cauſes be-

tween party and party give a verdict before any of the Judges of the Court, and then they may eat and drink, and the next morning in open Court, they may either affirm or alter their privy verdict, and that which is given in Court shall stand.

If the Jury after their evidence given unto them at the Barre, do at their own charges eat or drink either before or after they be agreed on their verdict, it is finable, but it shall not avoid the Verdict, but if before they be agreed upon their Verdict, they eat or drink at the charge of the Plaintiff, if the verdict be given for him, it shall avoid the Verdict, but if it be given for the Defendant, it shall not avoid it, *& sic è converso.* But if after they be agreed on their verdict, they eat and drink at the charge of him for whom they do pass, it shall not avoid the verdict.

If *A.* be appealed or indicted of murder, *viz.* that he of malice prepensed, kills *J. A.* pleadeth that he is not guilty *modo & forma*, yet the Jury may find the defendant guilty of man-slaughter without malice prepensed, because the killing of *J.* is the matter, and malice prepensed is but a circumstance.

Cook on Lit. l.3.c.8. sect.484.

Quod verò Polydorus Virgilius scribit Guilielmum illum victorem duodecim virorum judicium primum induxisse, nihil à vero alienius. Multis enim ante annis in usu fuisse certissimum est ex legibus Ethelredi, nec est cur terrible judicium vocaret, è populo enim duodecim viri liberi & legales è vicinia vitè evocantur, hi jurejurando obligantur vere de facto sententiam dicere, advocatos coram testes tribunali utrinque disserentes, & audiunt; inde acceptis utriusq; partis instrumentis concludantur, sine cibo, potu, & igne detinentur (ni forte periculum

Cambden in Britan.

lum sit ne ex illis quispiam moriatur) donec coram judice pronunciaverint, ille de jure sententiam profert. Hanc enim rationem prudentissimi majores nostri, optimam esse ad veritatem eliciendam, ad corruptelas evitandas, & affectus intercludendos existimarunt.

JUSTICES.

Justices, They are called *Justices per metonymiam subjecti*, because they do or should do Law and Justice. *Cook on Lit.*

All the Commissions of the Justices of the Assize are bounded with this express limitation, *Faciunt quod ad justitiam pertinet secundum legem & consuetudinem Angliæ.*

K.

KING.

KING, The King by his dignity royall, is the principall Conservator of Peace within his Dominions, and is *capitalis Justitiarius Angliæ*. The Kings of *England* themselves heretofore often sat in Court in the Kings Bench, the King of *Denmark* sitteth openly in Justice thrice in the Week, and hath doores kept open for the nonce. *D. & Student c. 7. Fortescue de laudibus legum Angliæ, &c.*

The Kings of *England* at their Coronation take a solemn oath to cause all the Customes of their Realm faithfully to be observed, they promise to all their Subjects, *quod nulli vendent, nulli negabunt, aut different justitiam vel rectum.*

The alii.

The King cannot take or part from any thing but by matter of Record, and that is for the dignity and Majesty of his person.

Rex precipit, & lex precipit, are all one, for the King must command by matter of Record, according to the Law. *Cook's 2 part of Instit. cap.* 15.

Bracton. All Lands are holden of him either immediately, or mediately, no Action lieth against him.

Cook 7 Rep. Calv. case. It is a Maxim in the Law, *That the King can do no wrong*, because it presumes he will do no wrong.

in genere he dieth not but in hoc individuo, *Henry and Edward the King.* The King hath two capacities in him.

One a naturall body, being descended of the blood Royal of the Realm, and this body is of the creation of the Almighty God, and is subject to death, infirmity.

2. A politique body or capacity, so called because it is framed by the policy of men, and in this capacity, it is said, the King never dieth.

Cook 5 Rep. Cases of Ecclesiasticall persons. Although it be a Rule in the Law, that the King is not bound by the generall words of an Act of Parliament, where he is not named, yet in these cases the King shall be bound by the generall words of an Act, though he be not named, *viz.* if the Statute be to suppress wrong, to take away fraud, or to prevent decay of Religion, for Religion, Justice and truth are the Supporters of Crowns and Diadems.

Summa ratio est quæ pro religione facit.

KNIGHT.

Knight, is a Saxon word, and by them written *Cnite*, *Chivaler* taketh his Name from the Horse, because they alwaies served in Warres on

on horſ-back. The Latins call them *equites*, the *Spaniards Cavalleroes*, the French-men, *Chivaliers*, the Italians *Cavallieri*, and the Germaines *Reiters*, all from the Horſe. *Cook on Lit. l.2.c.4. ſect.112.*

KNIGHTS-FEE.

A *Knights-Fee* conſiſteth of twenty pound Land, and he payeth for his relief, for a whole Knights Fee, the fourth part of his Fee, *viz.* five pound and ſo according to the rate. *Fœdum militis. Cook on Lit.l.2.c.4. ſect.112.*

KNIGHTS-SERVICE.

Knights-Service, is commonly called *ſervitium militare*, or *ſervitium militis*. Regularly there are ſix incidents to Knights ſervice, *viz.* two of honour and ſubmiſſion, as Homage and Fealty, and four of profit, Eſcuage, wardſhip of the Lands, marriage and relief. *Cook on Lit. l.2.c.4. ſect.103.*

It was called *ſervitium militare*, the ſervice of a Souldier, and the title of Knight-hood came firſt by doing ſome military ſervice, and *miles* ſignifieth both a Souldier and a Knight.

L.

LAND.

Dr. & Stu. cap. 8.

Land, The Land of every man is in the Law inclosed from other, though it lie in the open field, and therefore if a man do trespass therein, the Writ shall be, *Quare clausum fregit.*

Cook on Lit. l. 1. c. 2. fol. a 4.

Terra, Land in his generall and legall signification, includeth not only kind of grounds, as Meadow, Pasture, wood, but Houses, and all Edifices whatsoever: in a more restrained sense it is taken for arable ground.

Cook's 5 Re. Anthony Howes case.

Twenty pound of Land was held anciently sufficient to maint in the degree of a Knight, 400 markes of Land *per annum*, was a competent living anciently for a Baron, and 400 l. *per annum*, *ad justinendum nomen & onus* of an Earl 800 markes *per annum*, the Revenue of a Marquess, and 800 l. of a Duke.

Qui capit uxorem, capit lites, & qui habet terras, habet guerras. A Wife brings Warres, and wealth brings Warres, Quarrels, Suits and Controversies at Law.

For originally all lands were derived from the Crown.

All Lands are holden of the Crown either immediately or mediately by meine Tenants, the Conqueror by right of Conquest got all the Lands of the Realm into his own hands, and as he gave it, he still reserved Rents, and services, which reservation is that which is called the Tenure of Lands.

Terra Land, in the legall signification comprehendeth any ground, soil, or earth whatsoever, as

as Medows, Paſtures, Woods, Moors, Waters, Marſhes, Furſes and Heath, *Terra eſt nomen generaliſſimum, & comprehendit omnes ſpecies terræ,* but properly *terra dicitur à terendo, quia vomere teritur*, and anciently it was written with a ſingle *r*, and in that ſenſe it includeth whatſoever may be ploughed, and is all one with *arvum ab arando*. It legally includeth alſo all Caſtles, Houſes and other buildings: For Caſtles and Houſes conſiſt upon two things, *viz.* Lands or Ground, as the foundation and ſtructure thereupon; ſo as paſſing the Land or Ground, the ſtructure or building paſſeth therewith. *Cook on Lit. l. 1. c. 1. ſect. 1.*

The earth hath in Law a great extent upwards, for *cujus eſt ſolum, ejus eſt uſque ad cælum.* *Cooke Rep. Altered caſe.*

If a man ſeized of Lands in fee, by his Deed granteth to another the profits of thoſe Lands, to have and to hold to him and to his Heirs, and maketh livery *ſecundum formam chartæ*, the whole Land it ſelf doth paſs, for what is the Land, but the profits thereof? for thereby paſture, herbage, trees, mines, and all whatſoever parcell of the Land doth paſs.

LARCENIE.

Larcenie, is ſo called from the Latin, *Latrocinium*; it is defined to be the taking away of ſome perſonall Chattel in the abſence of the owner. In reſpect of the thing taken away, it is ſaid to be either great or little. Petty Larceny is, where the thing ſtollen doth not exceed the value of 12 d. and that (ſay ſome) is Felony: For the Indictment (ſay they) muſt be *felonice cæpit*, and a man may juſtifie the calling of one theif for ſuch an offence, and he ſhall forfeit all his goods and chattels for ſuch a felony. *Terms of Law, the Indictment muſt be alſo* cæpit & aſportavit, *or* cæpit & abduxit. *One ſhall forfeit his goods and be whipped for petty Larceny.*

If one ſhall ſteal goods to the value of 4. d. at one time, and 6 d. at another, and of 3. d. at another time, which do exceed the value of 12 d. and theſe ſeverall goods be all ſtolen from one and the ſame perſon, then may they be put together in one Indictment; and the offender being thereupon arraigned, and found guilty, ſhall have judgment of Death.

LATINE.

Latine. Falſ Latin ſhall not quaſh an Indictment, nor abate any Declaration; for although the Original Writ ſhall abate for falſe Latin, yet Judicial Writs, or a Fine, ſhall not be impeached for falſe Latin.

False Latin will abate a writ, not a Grant, Malagrammatica non vitiat conceſſionem falſa Orthographia non vitiat enunciationem.

The ſame Law is of an Indictment, as if in an Indictment it be *præfato reginæ*, whereas it ſhould be *præfatæ reginæ*, or *præfatæ Regi*, for *præfato Regi*; the word being Latin, and ſignificant; although it be not congruous Latin, the Indictment for ſuch incongruity ſhall not be quaſhed.

Cook 5 Rep. Longs caſe.

But if the word be not Latin, nor a word allowed by the Law, as *vocabulum artis*, (for every Art and Science have their *propria vocabula Artis*) but is inſenſible; and if it be in a materiall point, this makes the Indictment inſufficient, as *burglaritur, murarum, felonicè, & ſimilia ſunt vocabula Artis* known to the Law; and therefore if theſe words, or the like, be miſtaken in an Indictment, ſo that in a materiall place there is an inſenſible word which is not Latin, nor any word known in the Law, this makes the Indictment vitious and inſufficient, as *murdredum* for *murdrum*, or *burgariter* for *burglariter*, *feloniter* for *felonice*.

LAW.

Law, is an Art of well-ordering a Civil Society. *Bracton* *saith*, *that* Lex est sanctio justa, jubens honesta, & prohibens contraria: *so as every Law must have three qualities.* 1. *It must be* justa, 2. Jubens honesta, 3. Prohibens contraria.

Our Common Laws are aptly and properly called *Leges Angliæ* the Laws of *England*, because they are appropriated to this Kingdom of *England* as most apt and fit for the Government thereof, and have no dependance upon any forrein Law whatsoever, no not upon the Civil or Canon Law other then in Cases allowed by the Laws of *England*. *Cook's 2 part of Instit. c.o.*

The Common Law of *England* is a Law used time out of mind, or by prescription throughout the Realm.

The Law of nature is that which God at the time of creation of the nature of man, infused into his heart for his perservation and direction, and this is *lex aterna*; this was 2000 years before any Law written, and before any Judiciall or Municipall Laws. *Jura naturalia sunt immutabilia* this Law is *indelibilis & immutabilis*, Cook Calvins Case. Neminem oportet esse sapientiorem legibus, ubi lex non distinguit, nec nos distinguere debemus. Lex plus laudatur quando ratione probatur.

The Law of *England* is grounded upon six principall Points:

1. The Law of Reason.
2. The Law of God.
3. On divers generall Customes of this Realm.

4. On

4. On divers Principles and Maximes.
5. On divers particular Customes.
6 On divers Statutes made in Parliaments.

Cook preface to the 6 Rep. and on Lit. lib. c.12. sect. 213.

The Antient and excellent Laws of *England* are the Birth-right, and the most antient and best inheritance that the Subjects of this Realm have, for by them he enjoyeth not only his Inheritance and goods in peace and quietnes, but his life, and his most dear Countrey in safety: sometimne it is called *Right*; sometime *Common Right*, and sometime *Communis Justitia*.

Our Laws are the same which the *Norman* Conqueror found in this Realm of *England*.

Cook preface to the 8 Rep.

The Laws that *William* the Conqueror sware to observe, were, *Bona & approbata antiquæ regni leges*.

Cook on Littleton.

The Law of *England* respects the effects and substance of the matter, and not the very niceity of form and circumstance, *Qui hæret in litera, hæret in cortice, apices juris non sunt jura: Nihil quod est contra rationem, est licitum*: For Reason is the life of the Law, nay, the Common Law it self is nothing else but Reason, which is to be understood of an artificiall perfection of reason gotten by long study, observation, and experience, and not of every mans naturall reason: For *nemo nascitur artifex*. This legall reason is *summa ratio*. And therefore, if all the reason that is disperſed into so many severall heads were united into one, yet could he not make such a Law as the Law of *England* is, because by many successions of Ages it hath been fined and refined, by an infinite number of grave and learned men, and by long experience grown to such a perfection for the Government of this Realm, as the old Rule may justly be verified of it, *Neminem oportet esse sapientiorem legibus*. No man (out of his own private reason) ought

Cook on Lit. l.2.c.9. sect.138.

ought to be wiser then the Law, which is the perfection of Reason.

Quæritur, ut crescunt tot magna volumina legis?

In promptu causa est. crescit in orbe dolus.

All Books written in the Law are either Historicall, as the Year-Books of the Common Law, or explanatory, as Mr *Stamford* his Treatise of the Prerogative, or Miscellanea'll, as the Abridgements of the Common Law, or Monologicall, being of one certain subject, as Mr *Stamford* his Book intituled the Pleas of the Crown, *Lamberds* Justice of Peace. One of the Books of the Law is called *Fleta*, because the Authour wrote it in the *Fleet*, and the Fleet took the name of the River running by it, called the *Fleet*. *Cook*'s Preface to 10 *Rep.* See Mr *Seld. ad Fled. Dissect.*

See in Fulbecks parallels, 3 chap. a censure of the Writers of the Law.

LEGACY.

Legacy (otherwise termed by our Common Lawyers a devise) is a Gift left by the deceased to be paid or performed by the Executor, or Administrator.

LEASES.

Leases. There be three kinds of persons, that at this day may make Leases for three Lives, which could not do so when *Littleton* wrote.

1. Any person seised of an Estate tail in his own right.
2. Any person seised of an Estate in Fee-simple in the right of his Church.
3. Any Husband and Wife seised of any Estate of Inherirance in Fee-simple, or Fee-tail in the right of his Wife, or joyntly with his Wife before the coverture, or after.

Lease *from the French* laisser, linquere, relinquere, omittere. *Cook on Lit. l. 1. c. 7. sect. 58.*

Id. ib. If one make a Leaſe for ſo many years as he ſhall live, this is void *in præſenti*, for the incertainty.

Id. ubi ſupra. In the eye of the Law, any eſtate for life being an eſtate for free-hold, againſt whom a *præcipe* doth lie, is an higher and greater eſtate then a Leaſe for years, though it be for a thouſand, or more, which are never without ſuſpicion of fraud.

Touching the time of the beginning of a Leaſe for years; it is to be obſerved, that if a Leaſe be made by indenture, bearing date 26 *May*, to have and to hold for twenty one years, from the date, or from the day of the date, it ſhall begin on the twenty ſeventh day of *May*, if the Leaſe bear date the twenty ſixth day of *May*, &c. to have and to hold from the making thereof, or from henceforth, it ſhall begin on the day in which it is delivered; for the words of the Indenture are not of any effect till the delivery, and thereby from the making or henceforth take their firſt effect. But if it be *à die confectionis*, then it ſhall begin on the next day after the delivery, if the *habendum* be for the term of twenty one years without mentioning when it ſhall begin, it ſhall begin from the delivery, for there the words take effect. If an Indenture or Leaſe bear date which is void, or impoſſible, as the 30 day of *February*, or 40 of *March*, if in this caſe the term be limited to begin from the date, it ſhall begin from the delivery, as if there had been no date at all.

Cook 5 Rep. Claytons caſe.

Id. ib.

Cook on Lit. ubi ſupra. fol. 58. It is true, that every Leaſe at will muſt be at the will of both parties, and therefore when the Leaſe is made to have and to hold at the will of the Leſſor, the Law implyeth it to be at the will of the Leſſee alſo; for it cannot be at the will of the

the Lessor, but it must be at the will of the Lessee.

If the Wife of *J. S.* be great with Child with a Sonne, and a Lease be made untill the issue in the Womb of his Mother come to full age, this is not a Lease for years; for at the time when the Lease is to take effect, it is uncertain when the Sonne shall be born; and by consequence the beginning, continuance, and end of this is uncertain. And when a Lease for years shall be made good by reference, the reference ought to be to a thing which hath expressed certainty at the time of the Lease made, and not to a possible or casuall certainty. Therefore, if I have rent of 20 s. *per annum* in fee issuing out of Black Acre, payable continually at the Feast of Easter, and I grant the same Rent to you untill ye shall have received of the same Rent 21 l. in this case you shall have this Rent for 21 years; for this hath reference to the express certainty, *viz.* the annuall Rent, which is twenty Shillings *per annum*, untill twenty one pounds be levied of the issues and profits, this is but a Lease at will without livery, for it is not certain, that the Land shall be every year of an annuall value. *Cook 6 Rep. Bishop of Bathes case*

If a man hath Mines hidden within his Land, and leaseth his land, and all the Mines within it, there the Lessee may dig for them, for *Quando aliquis aliquid concedit, concedere videtur & id sine quo res ipsa esse non potest.* *Cook 5 Rep. Cases of Leases.*

There must not be a double Lease in being at one time, as if a Lease for years be made according to the Statute, he in reversion cannot put out the Lessee, and make a Lease for life, or lives, according to the Statute, nor *è converso*; for the words of the Statute be to make a Lease for three lives, or one and twenty years, so as one or the other *Cook on Lit. l. 1. c. 7. sect. 58.*

other may be made, and not bo-

A Leafe of Lands is as good without deed as with deed. But in a Leafe for term of life, it behoveth to give livery and ſeiſin upon the land, or elſe nothing ſhall paſs by the grant, becauſe they are called Free-holds.

LIBELL.

Libell. Every Libell (which is called *famoſus libellus* ſeu *infamatoria ſcriptura*) is made either againſt a private man, or againſt a Magiſtrate, or publique perſon; the firſt deſerves a ſevere puniſhment; for although the Libell be made againſt one, yet this incites all the ſame Family, kindred, or ſociety to revenge; the ſecond is a greater offence, for it concernes not only the breach of Peace, but the ſcandall of Government.

2. Although the private man or Magiſtrate be dead at the time of making the Libell, yet this is puniſhable: for in one caſe this incites others of the ſame Family, Blood, or Society, to break the Peace; and in the other the Libeller traduceth and ſlandereth the State and Government, which dieth not.

3. A Libeller was to be puniſhed either by indictment at the Common Law, or by Bill, if he deny this, or *ore tenus*, upon confeſſion in the Star-Chamber, and according to the quality of his offence, he was to be puniſhed by fine or impriſonment, and if the caſe be exorbitant, by pillory and loſs of his ears.

Cook 5 Rep. de libellis famoſis.

4. *Non refert*, it ſkills not, whether the Libell be true, or the party againſt whom this is done, be of good or evil fame.

Every infamous Libell, *aut eſt in ſcriptis aut ſine ſcriptis*:

1. *In*

1. *Inscriptis*, when an Epigram, or other writing is composed, or published to another's disgrace, and it may be published *Versis aut cantilenis*, as where this is malitiously repeated or sung in the presence of others.

2. *Traditione*, when the Libell, or any Copy of it is delivered over to scandalize the party. *Famosus libellus sine scriptis* may be

1. *Pictoris*, as to paint the party in a shameful and ignominious manner. *Cook 5 Rep. de libellis famosis.*

2. *Signis*, as to fix a Gallowes, or other reproachfull and ignominious signes at the door of the party, or else-where. And it was resolved, *Mich.* 43. and 44 *Eliz.ab.* In the Star-Chamber in *Hallywoods* case, that if any find a Libell, and will preserve himself out of danger, if this be composed against a private man, the finder either may burn this, or presently shew it to the Magistrate: But if it concern a Magistrate, or other publique person, the finder ought presently to deliver this to a Magistrate, to the intent, that by examination and industry the Authour may be found and punished. *Tria sequuntur defamatorem famosum.*

1. *Pravitatis incrementum*, increase of lewdness.
2. *Bursæ decrementum*, evacuation of purse and beggery.
3. *Conscientiæ detrimentum*, shipwrack of Conscience.

If one read a Libell, or hear it read, this is no publication of it; for before he read, or heard it read, he cannot know it to be a Libell; or if he hear, or read it, and laugh at it, this is no publication of it: But if after that he hath read, or heard it, he repeat this, or any part of it in the hearing of others; or after that he knows it to be

a Libell, reads it to others, this is an unlawfull publication of it; or if he write a copy of it, and do not publish it to others, this is not a publication of the Libell: for every one which shall be convicted, ought to be a contriver, procurer, or publisher of it, knowing it to be a Libell. But it is a great evidence that he publisheth it, when he knowing it to be a Libell writes a copy of it, unless he can after prove that he delivered this to a Magistrate to examine it, for then the subsequent act explains his precedent intention.

Cook 9 Rep. Jo. Lambs case.

LIBERTY.

Liberty. This word Liberty notes a priviledge held by grant or prescription, whereby a man enjoyes some favour beyond an ordinary Subject.

Bracton, l.2.c.2.

Liberty from the Law is the delivering us from that hand or power of the Law, by which we were formerly held.

LIGEANCE.

Ligeance, is so called *à ligando*, being the greatest and highest obligation of duty and obedience that can be. It is, the true and faithfull obedience of a Liege-man, or Subject to his Liege-Lord or Soveraign.

Cook on Lit. l.2.c.11. sect.198.

Ligeantia Domino Regi debita est Lex.

Ligeantia est vinculum fidei ligeantia est legis essentia.

1. Perpetua.

1. *Originaria, sive naturalis sive nata*, and this is alwaies absolute, and due by birth-right, and is called *Alta ligeantia*; and he that oweth this, is called *Subditus natus.*
2. *Data, aut per denizationem aut per naturalizationem.*

2. Temporaria, aut

Cook on Lit. l.2.c.11. sect.198. and 7 Rep. Calv. case.

1. *Localis*, wrought by the Law when an Alien that is in amity, cometh into *England*, for

ther

then he is within the Kings protection, and owes a locall obedience or ligeance.

2. *Limitata*, as when one is made denizen for life, or in tail.

As the ligatures or strings do knit together the joynts of all the parts of the body, so doth ligeance joyn together the Soveraign and all his Subjects, *quasi uno ligamine.* *Cook 7 Rep. Calvins case.*

Between the Soveraign and the Subject, there is *duplex & reciprocum ligamen; quia sicut subditus Regi tenetur ad obedientiam, ita Rex subdito tenetur ad protectionem.* There is *præsidium* due on the Kings side, *subsidium* on the Subjects part. In the Acts of Parliament, Subjects are called Liege-people, and the King the naturall Liege-Lord of his Subjects; therefore *protectio trahit subjectionem, & subjectio protectionem.* He should maintain and defend them, and they are bound to obey and serve him. Ligeance is due only to the King, to his naturall body, therefore the indictment in Treason concludeth, *Contra ligeantiæ suæ debitum.*

LIMITATION.

Limitation. If a man give lands to a man, to have and to hold to him, and to the heirs males of his body, and to him and the heirs females of his body; the estate to the heirs females is in remainder, and the daughters shall not inherit any part so long as there is issue male; for the estate to the heirs males is first limited, and shall be first served, and it is as much to say, and after to the heirs females, and males in construction of Law are to be preferred. *Cook on Lit. l. 3. c. 13. sect. 719.*

LIVERY.

Livery of seisin, is a solemnity that the Law requireth for the passing of a Free-hold, or Lands or Tenements, by delivery of seisin thereof. There be two kinds of livery of seisin, *viz.* a livery in Deed, and a livery in Law. A livery in Deed, is when the Feoffor taketh the ring of the door, or turf, or twig of the Land, and delivereth the same upon the Land to the Feoffee, in the name of seisin of the Land. A livery in Deed may be two manner of waies by a solemn act and words, as by delivery of the ring, or hasp of the door, or by a branch or twig of a tree, or by a turf of the Land; and with these, or the like words, the Feoffor, and Feoffee, both holding the deed of the feoffment, and the ring of the door, hasp, branch, twig, or turf; and the Feoffor saying, Here I deliver you seisin and possession of this house, in the name of seisin, and possession of all the Lands contained in this Deed; or enter you into this house or land, and have and enjoy it according to the Deed; or enter into the house or land, and God give you joy; or I am content you shall enjoy this Land, according to the Deed, or the like. A livery in Law is when the Feoffor saith to the Feoffee, being in view of the house or Land (I give to you yonder land, to you, and your Heirs, and therefore enter into the same, and take possession thereof accordingly) and the Feoffee doth accordingly in the life of the Feoffor enter; this is a good feoffment for *signatio pro traditione habetur*. But if either Feoffor or the Feoffee die before the entry, the livery is void. And delivery within the view is good, where there is no deed of feoffment: And such a livery is good, albeit the Land lie in another Countrey.

Cook on Lit. l.1. c.7. sect.59.

Cook on Lit. l.1.c.7. sect.59. and 5 Rep. Sharpscase.

There

There is a diverſity between the livery of ſeiſin of land, and the delivery of a Deed; for if a man deliver a Deed without ſaying of any thing, it is a good delivery; but to a livery of ſeiſin of land words are neceſſary; as taking in his hand the deed, and the ring of the door (if it be an houſe) or a turf or twig (if it be of land) and the Feoffee laying his hand on it, the Feoffor may ſay to the Feoffee, Here I deliver to you ſeiſin of this houſe, or of this land, in the name of all the land contained in this Deed, according to the form and effect of the Deed, and if it be without Deed, then the words may be, Here, I deliver you ſeiſin of this houſe or land, to have and to hold to you for life, or to you, and the heirs of your body, or to you, and your heirs for ever. When *Ephron* infeoffed *Abraham* of the field of *Machpela*, he ſaid to him, *Agrum trado tibi, I deliver the field to thee.* When one makes livery of ſeſin, this livery ſhall be taken moſt ſtrong againſt him.

And therefore if one give land to a man *& hæredibus*, this ſhall be a Fee-ſimple to him, although *ſuis* be left out, and yet he gives not Fee-ſimple expreſsly, but becauſe every livery ſhall be taken moſt ſtrongly againſt him that makes it. *Plowden Colthirſt againſt Beinſhin.*

M.

M.

MAGISTRATE.

Magistrate, he is *custos utriusque tabulæ* the keeper or preserver of both Tables of the Law.

If any Magistrate or Minister of Justice in execution of their Office, or in keeping of the peace, according to the duty of their office, be slain, this is murder, for their contempt and disobedience to the King and the Law; for it is *contra potestatem Regis & Legis*. If the Sheriff, a Justice of Peace, the chief Constable, Watchmen, or any which come in their aid, be killed in doing of their Office, this is murder. For when any of the Kings Officers by process of Law (be it erroneous or not) arresteth another in the Kings Name, or require the disturbers of peace to keep peace in the Kings Name, and they disobey the Kings Command and kill him, reason requireth that this killing should be an offence of the highest degree in this nature, and that is murder of malice prepensed.

Cook 9 Rep. Mackallies case.

MAIME.

Maime, (*membri mutilatio* or *obtruncatio*) is a corporall hurt, whereby one looseth a member, by reason whereof, he is less able to fight, as by putting out his eye, beating out his foreteeth.

Cook on Lit.

This offence of maim, is under all felonies deserving death, and above all other inferiour offences, so as it may be truly said of it, that it is *inter crimina*

Cook ubi supra.

crimina majora minimum, & inter minora maximum. Vita & membra sunt in potestate Regis. The life and members of every subject are under the protection of the King.

In my Circuit (saith Sir *Edward Cook*) *in anno* 11. *Jacobi Regis*, in the County of *Leicester*, one *Wright*, a young, strong, and lusty Rogue, to make himself impotent, thereby to have the more colour to beg, or to be relieved without putting himself to any labour, caused his companion to strike off his left hand, and both of them were indicted, fined and ransomed therefore. *Cook on Lit. l.2.c.11. sect.194.*

The cutting of an ear or nose, or breaking of the hinder teeth is no maim, but rather a deformity of body, than diminution of strength; by a maim a member is hurt, or taken away, and the party thereby so hurt is made unperfect to fight.

The party shall recover only dammages in maim. *Lit tit. Villenage.*

MAINPRISE.

Mainprise, manucaptio is compounded of two French words, *main*, id est, *manus* a hand, and *prins*, id est, *captus* taken, as it were taken into their hands. It signifieth in our common Law, the taking or receiving a man into friendly custody, that otherwise is or might be committed to prison, upon securtiy given for his forth-coming at a day assigned. *Minshew.* *See Bailement.*

Such are called *Mainpernours*, because they do receive him into their hands.

MANNOUR.

Mannour, manerium est nomen collectivum & generale, it comprehendeth Houses, Lands, Gardens, Trees, Rents and Services: *Manerium quasi manurium*, because it is laboured with handy work by the Lord himself; or it may come from the French word *L. Dyer.*

Cowels Interpret. & Inſtitut.

word *manoir*, id eſt, *manſions*; becauſe the Lord remaineth there, and hath his houſe which is called, the principall houſe of the Mannour. It cannot be a Mannour unleſs there be a Court Baron belonging to it, and be time out of mind: it conſiſts of demeans and ſervices, if they be ſevered, the Mannour is deſtroyed.

MAINTENANCE.

Maintenance, *manutenentia* is derived of the verb *manutenere*, and ſignifieth in Law a taking in hand, bearing up or upholding of Quarrels, and ſides, to the diſturbance or hinderance of common right, *culpa eſt rei ſe immiſcere ad ſe non pertinenti.*

Cook on Lit. l.3.c.13. fol.301. Maintenance is moſt uſually done by the hand, either by delivery of Money, or other reward, or by writing on the behalf of one of the parties in a ſuit depending. Cook's 2 part of Inſtit. c. 28.

When one laboureth the Jury, if it be put to appear, or if he inſtruct them or put them in fear, or the like; he is a maintainer, and an action of maintenance lyeth againſt him.

Manutenentia eſt duplex, 1. *Curialis*, in Courts of Juſtice, *pendente placito.*

Cook's 2 part of Inſtit.c.28.

2. *Ruralis*, to ſtirre up and maintain complaints, ſuits, and parts in the County other then their own, though the ſame depend not in plea.

MANUMISSION.

Manumiſſion, *manumitter*, which ſignifieth to make free, is properly to ſend one out of his hand, becauſe ſo long as a ſlave continues in his ſervitude, he is in the hand of his Maſter.

MAR-

MARRIAGE.

Marriage, *A feme covert* is not *sui juris*, but only *sub potestate viri*, when a Baroness marrieth one under the degree of a Baron, by such marriage her dignity is determined; for the rule is, *quando mulier nobilis nupserit ignobili desinit esse nobilis.* But this rule is to be intended of a woman which attains Nobility by Marriage; as by marriage of a Duke, Earl, or Baron: For in such case, if after she marry under the degree of Nobility, by such marriage with one which is ignoble, she loseth her dignity, which she had attained by marriage with one of the Nobility. For *Eodem modo quo quid constituitur, dissolvitur.*

Cook 4 Rep. Altons case and on Lit. l. 1. p. 16. & 6 Rep. Countess of Rutlands case.

But if a woman be Noble, as a Dutchess, Countess, Baroness, by descent, although she marry with one under the degree of the Nobility; yet her birth-right remains: for this is annexed to the blood, and is *Character indelebilis.*

But if a Dutchess by marriage marry a Baron of the Realm, she remaineth a Dutchess, and loseth no her name, because her Husband is Noble.

Yet by the Courtesie of *England*, if women get to any degree of Estate, they never lose it, by marrying after more meanly; but do still take place according to the estate of their first Husband.

Dalton.

The Law tenders the speedy advancement of women, *quia maturiora sunt vota mulierum quam virorum.*

MAXIM.

MAXIM.

Cook on Lit. Principia probant, non probantur,

A *Maxim*, is a propoſition to be of all men confeſſed, and granted without a proof, argument or diſcourſe, *contra negantem principia, non eſt diſputandum*, antient principles of the Law ought not to be diſputed.

Cook on Lit. p.7.7.

It is better (ſaith the Law) *to ſuffer a miſchief* that is particular to one, *then an inconvenience*, that may prejudice many, *Lex citius tolerare vult privatum damnum quam publicum malum. Summa ratio eſt,*

Dr. and Student.

quæ pro religione facit. A Statute directly againſt the Law of God is void.

Cook 5 Rep.

The Rule of the Law is, *Nemo debet bis puniri pro uno delicto*, and the Divine ſaith, *Nemo bis agit in id ipſum. Intereſt Reipublicæ ne quis re ſua malè utatur.*

Beneficium tranſit cum onere, qui ſentit commodum ſentire debet & onus.

Benignior ſententia in verbis generalibus ſeu dubiis eſt præferenda.

Intereſt Reipublicæ, ne malificia maneant impunita, & impunitas ſemper ad deteriora invitat.

Nihil tam conveniens eſt naturali æquitati, unumquodque diſſolvi eo ligamine quo ligatum eſt.

Cook 1 Rep. Cholmleys caſe.

As no eſtate can be veſted in the King without matter of Record, ſo none can be deveſted out of him without matter of Record. *Things are diſſolved, as they are contracted.*

An Obligation or other matter in writing, cannot be diſcharged by an Agreement by word.

In præſentia majoris ceſſat potentia minoris.

The Book Caſes are beſt proofs what the Law is.

Cook on Lit. p.141.

Argumentum ab authoritate, fortiſſimum eſt in Lege.

Repellitur

Repellitur à Sacramento infamis.

Quod ab initio non valet, in tractu temporis non convalescet, & quæ mala sunt inchoata à principio, vix est ut bono per agantur exitu. Cook.

MISPRISION.

Mispriſion, is when one knoweth that another hath committed treaſon, or felony, and will not diſcover him to the King, or to any Magiſtrate, but doth conceal the ſame. Eſt quædam negligentia ſupinar rei cujuſquam, à Gallico Meſpriſer Cowels Inſt.

In all Caſes of Miſpriſion of Treaſon, the party offender ſhall forfeit his goods for ever, and the profits of his Land for term of his life, and his body to priſon at the Kings pleaſure.

MONEY.

Money, the King by abſolute prerogative may make any forreign coyn lawfull money of *England* at his pleaſure by his proclamation. Cook 5 Rep. Wades caſe

If a man be bound to pay four hundred pounds at ſuch a day, if he tender it in bags it is ſufficient, for it cannot be counted in a day. Id. ib. The party that is to receive it, is to pull it out and tell it.

Lawfull Money of *England*, either gold or ſilver, is of two ſorts.

Viz. 1. The Engliſh Money coyned by the Kings Authority.

2. And forreign Coyn by proclamation made currant within the Realm. Cook on Lit.

Coyn, *cuna dicitur à cudendo*, of coyning, in French *coin* ſignifieth a corner, becauſe in antient time Money was ſquare with corners, as it is in ſome Countries at this day. Some ſay it is ſo called *à κοινὸς, quia communis, moneta à monendo*, becauſe it ſheweth the authour and value. Every piece of Money ought to have a certain form of impreſſion which ſhall be *cognoſcibilis, & diſcernibilis*, for as Wax is not a Seal without print, ſo metall is not Money, without impreſſion. Cook on Lit. p. 207. b.

MONSTER.

MONOPOLY.

Monopoly, It is an allowance by the King by his Grant, Commiſſion or otherwiſe, to any perſon or perſons, bodies politique or corporate, of or for the ſole buying, ſelling, making, working, or uſing of any thing, whereby any perſon or perſons, bodies politique or corporate, are ſought to be reſtrained of any Freedom or Liberty that they had before, or hindred in their lawfull Trade. *Coke's 3 part of his Inſtitutes c.85.*

All Grants of Monopolies are againſt the Antient and fundamentall Laws of this Kingdom. *Id ibid.*

All Monopolies are againſt the great Charter, becauſe they are againſt the Freedom of the Subject, and againſt the Law of the Land. *Coke's 2 part of Inſtit. c.29.*

MONSTER.

Monſtrum dicitur à monſtrando, *Varro. Scaliger. Coke on Lit. l.3 b.&7.b*

A *Monſter* born within lawfull matrimony, that hath not humane ſhape, cannot purchaſe, much leſs retain any thing, yet if he have humane ſhape, he may be heir, though he have ſome deformity in any part of his body.

MORTGAGE.

Mortagage, is derived of two French words, *viz. mort*, id eſt, *mortuum*, and *Gage*, *id eſt vadium*, or *pignus*. And it is called in Latin *mortuum vadium* or *Morgagium*, to diſtinguiſh it from that which is called *vivum vadium*. As if a man borrow an hundred pounds of another, and maketh an eſtate of Lands unto him, untill he hath received the ſaid ſumme of the iſſues and profits of the Lands, ſo as in this Caſe neither Money nor Land dieth or is loſt, and therefore it is called *vivum vadium*.

Coke on Lit. l.3.c.5. ſect.332.

MORT-

MORTMAIN.

Mortmain, Some have ſaid, that it is called *manus mortua, quia poſſeſſio eorum eſt immortalis, manus pro poſſeſſione, & mortua pro immortali.* Others ſay, it is called *manus mortua per antiphraſin*, becauſe bodies politick and corporate never die. Others ſay, that it is called *Mortmain* by reſemblance to the holding of a mans hand that is ready to die, for that he then holdeth, he letteth not to go, till he be dead. Theſe and ſuch others are framed out of wit and invention, but the true cauſe of the name, and the meaning thereof was taken from the effects, as it is expreſſed in the Statute it ſelf, *per quod quæ ſervitia ex hujuſmodi feodis debentur, & quæ ad defenſionem regni ab initio proviſa fuerunt indebitè ſubtrahuntur, & capitales domini eſchaetas ſuas amittunt*, ſo as the Lands were ſaid to come to dead hands, as to the Lords, becauſe by alienation in Mortmain, they loſt wholly their Eſcheats, and in effect their Knights ſervices for the defence of the Realm, Wards, Marriages, Reliefs, and the like, and therefore it was called a dead hand, for that dead hand yeldeth no ſervice. *Cook on Lit. l. 1. c. 1. ſect. 1.*

Notwithſtanding the Srature of Mortmain, any one at this day may give Lands for finding a Preacher maintenance, or a School, for the Statute was made to reſtrain men from giving to ſuperſtitious uſes, and not to good and charitable uſes. *Cook 1 Rep. Porters caſe*

MULIER.

Mulier, hath three ſignifications. *Cook on Lit. l. 3. c. 6. ſect 299. and 8 Rep. Sir Rich. Lechfords caſe.*

1. *Sub nomine mulieris continetur quælibet fœmina.*
2. *Propriè ſub nomine mulieris continetur mulier, quæ virgo non eſt.*
3. *Ap-*

3. *Appellatione mulieris in legibus Angliæ continetur uxor, & sic filius natus, vel filia nata ex justa uxore appellatur in legibus Angliæ filius mulieratus, seu filia mulierata*, a ſon *mulier*, or a daughter *mulier*.

If the Baſtard dieth, ſeiſed without iſſue, and the Lord by eſcheat entreth, this dying ſeiſed ſhall not barre the *mulier*, becauſe there is no deſcent.

If the Baſtard enter, and the *mulier* dieth, his Wife *privement enſeint* with a Son, the Baſtard hath iſſue and dieth ſeiſed, the Son is born, his right is bound for ever, but if the Baſtard dieth ſeiſed, his Wife *enſeint* with a Son, the *mulier* enter, the Son is born, the iſſue of the Baſtard is barred.

Cook 8 Rep. Lechfords caſe.

A young Son which is born during the eſpouſals of a lawfull Wife, is called *mulier* or *filius mulieratus*, for in our Laws *mulier* is taken for *uxor*.

T. of Law,

It is taken in our Law for one that is lawfully begotten and born, and is alway uſed in compariſon with a Baſtard, only to ſhew a difference between them and alwaies you ſhall find this addition to Baſtard eldeſt, and *mulier* youngeſt, when they be compared together.

MURDER.

Murder, is a wilfull killing of a man upon malice prepenſed or forethought, and ſeemeth to come of the Saxon word *Mordren* which ſo ſignifieth.

Cook 4 Rep. caſes of appeals and indictments fol. 10. B.

If upon an affray made, the Conſtable and others in his aſſiſtance come to ſuppreſs the fray, and to preſerve the Peace, and in doing their office, the Conſtable or any of his aſſiſtants is ſlain, this is murder in the Law, although the murderer knew not the party which was killed, and although the affray

affray was ſuddain, becauſe the Conſtable and his aſſiſtants came by authority of the Law to keep the peace, and to prevent the danger which may enſue by breaking of it, and for this the Law adjudgeth it murder, and that the murderer had malice prepenſed, becauſe he oppoſeth himſelf againſt the Juſtice of the Realm, ſo if the Sheriff, or any of his Bailiffs or other Officers be ſlain in the execution of the proceſs of the Law, or in doing their Office, or if a Watchman be killed in doing his Office, this is murder.

The like is in 9 Rep. Mackallies caſe, and this reaſon given, for this is contra poteſtatem Regis, & Legis.

If a thief, which offers to rob a true man, kill him in reſiſting the thief, this is murder of malice prepenſed; or if one kill another without any provocation, the Law implyeth malice. *Cook 9 Rep. Mackallies caſe.*

The Statute 1 *Jac. Reg. c.* 8 hath well provided, that that party that ſtabbeth, or thruſteth any perſon (not having a weapon drawn, or that hath not firſt ſtriken him) ſo as he die thereof within ſix moneths after, ſhall ſuffer death as a willfull murderer.

A. hath wounded *B.* in fight, and after they meet ſuddainly, and fight again, and *B.* killeth *A.* this ſeemeth murder, and malice ſhall be intended in *B.* upon the former hurt; but now if *A.* had killed *B.* this ſeemeth but man-ſlaughter in *A.* for his former malice ſhall be thought to be appeaſed by the hurt he firſt did to *B.*

If two fall out upon a ſuddain occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and there in fight, the one killeth the other: here is no malice prepenſed, for the fetching of the weapon and going into the field, is but a continuance of the

ſuddain falling out, and the blood was never cooled: But if they appoint to fight the next day, that is malice prepenced. *Sir Edward Cook's 3 part of Inſtitutes c. 1.*

If *A.* put poiſon in a pot of Wine, to the intent to poiſon *B.* and lay it in a place where he ſuppoſeth *B.* will come and drink of it, and by accident one *C.* (to whom *A.* hath no malice) come, and of his own head take the pot, and drink of thus; *Cook 9 R. p. Agnes Gores caſe.* of which poiſon he dies, this is murder in *A.* for he completh the event with the intention, and the end with the cauſe But if one prepare Rats-bane to kill Rats and Mice, or other Vermine, and leave this in ſome place to this purpoſe, and with no ill intent; and one finding this, eat of it, this is not felony, becauſe he which prepared the poiſon, had no evil or felonious intent.

John Sanders had a purpoſe to kill his Wife, to the intent he might marry another whom he better affected, and opens his intent to *Alexander Archer*, and prayes his aid and counſell how he may effect it; he counſels him to poiſon her. And to this purpoſe the ſaid *Alexander* buyes the poiſon, *viz.* Arſenick and Roſe-acre, and gives this *Plowdens Comment. Sanders caſe.* to *Sanders* to miniſter to his Wife. Afterwards he gives his Wife this in a roſted Apple, and the Wife eats a little part of it, and gives the remnant to her young child about three years old, and the ſaid *John Sanders* ſeeing this, reprehends his Wife, and ſaith that Apples were not good for ſuch children, and ſhe ſaith it was better for the child *Here Sanders was adjudged a principall, and hanged; but whether Archer was acceſſary here, was a great doubt; for his offence was in counſelling, and procuring him to kill his Wife, and no other, for no mention was made of the Daughter.* then for her; and the child eats the impoiſoned

Apple

Apple, which the Father permits, to avoid suspicion; afterward the woman recovers, and the child dies of the said poison. This was murder in *Sanders*, though he bore no malice to his child, because he had an intent to kill a person: so if one lie in wait in a place to kill one, and another cometh to the place, and he which lies in wait mistakes him, and kills him; this is murder, being founded upon prepenced malice.

It was a Custom in old time, if one were found guilty in any appeal of murder, that his Wife, and all the nearest of his kin which was murdered, should draw the felon, who committed the murder, by a long rope to the place of execution. *Pulton de place Regis & Regni.*

If a Peer of the Realm be arraigned at the suit of the King upon an Indictment of Murder he shall be tryed by his Peers, that is Nobles; but if he be appealed of murder by a Subject, his tryal shall be an ordinary Jury of twelve Freeholders, as appears 10 *Edw.* 4, 6. 33 *Hen.* 8. *Cook 9 Rep Et probos & legales homines] juratos.*

The Town-ship shall be amerced for the escape of a murderer *tempore diurno*, although the murder was committed in the town-field, or lane, *L. Dyer p.* 210. B.

If a man be attainted of murder, he shall suffer pain of death, and shall forfeit lands, goods and chattels.

MUTE.

A Prisoner may stand *Mute* two manner of waies;

1. When he stands mute without speaking of any thing; and then it shall be enquired, whether he stood mute of malice, or by the Act of God, and if it be found that it was by the Act of God, then the Judge of the Court *ex officio*, ought to

inquire whether he be the ſame perſon, and of all other Pleas which he might have pleaded, if he had not ſtood mute.

2. When he pleads not guilty, or doth not directly anſwer, or will not put himſelf upon the enqueſt, to be tryed by God and the Countrey. *Cook's 2 part of Inſtit. c. 12.*

If a man ſtand mute in an Indictment he ſhall be put to his penance, if in an appeal he ſhall be hanged, if in a caſe of Treaſon, he ſhall be drawn and hang'd.

N

NAME.

Cook 6 Rep. Sir Moyle Finches caſe.

Name, If a grant be made to a Baſtard, by the name of him which begot him, as is ſuppoſed; this is good, if he be known by ſuch a Name.

The penalty or forfeiture of Players, prophanely uſing the Name of God, is ten pounds, the one moity to the King, the other to him that will ſue the Statute, 3 *Jac.* 21.

NIEFE.

Cook on Lit l. 2. c. 11. ſect. 202.

Niefe, ſome have holden, that if a Free-man take a nieſe, by this marriage the Wife ſhall be free for ever; but the better opinion of our Books is, that ſhe ſhall be priviledged during the coverture only, unleſs the Lord himſelf marrieth his nieſe, and then ſome hold that ſhe ſhall be free for ever.

Fitzh natura Brev. tit. de libertate probanda.

If a Free-man marry a Wife which is a nieſe to another

another, ſhe ſhall be free for ever, although the Husband die and ſhe ſurvive, this is *in favorem libertatis.*

NISI PRIUS.

Niſi prius, is a judiciall Writ, and ſo called becauſe that word is in the Writ. *Smiths Commonw. of Engl. c. 25.*

NON COMPOS MENTIS.

Non compos mentis, is a man of no ſound memory, many times the Latin word explaineth the true ſenſe, and calleth him *Amens, demens, furioſus, lunaticus, fatuus, ſtultus*, or the like: but *non compos mentis* is moſt ſure and legall. *Cook on Lit. l. 3. c. 6.*

Non compos mentis is of four ſorts. *Ideota* which from his nativity by a perpetuall infirmity is *non compos mentis*. 2. He that by ſickneſs, grief, or other accident wholly looſeth his memory and underſtanding. 3. A lunatique, that hath ſome time his underſtanding and ſometime not *aliquando gaudet lucidis intervallis*: and therefore he is called *non compos mentis* ſo long as he hath not underſtanding. Laſtly, He that by his own vitious act for a time depriveth himſelf of his memory and underſtanding as he that is drunken, but that kind of *non compos mentis* ſhall give no priviledge or benefit to him or his heirs; and a diſcent ſhall take away the entry of an Ideot, albeit the want of underſtanding was perpetual. So likewiſe if a man that becomes *non compos mentis* by accident be diſſeiſed and ſuffer a diſcent, albeit he recover his memory and underſtanding again, yet he ſhall never avoid the diſcent, and ſo it is *a fortiori* of one that hath *lucida intervalla*. If an Ideot make a feoffment in fee, he ſhall in pleading never avoid it, ſaying that He was an Ideot at the time of his feoffment, and ſo had been from his nativity. But upon an *Cook on Lit. l. 3. c. 6. fol. 405. & 4 Rep. Beverlies caſe.* *Id. ib.*

Office found for the King, the King ſhall avoid the ſo ſſment for the benefit of the Ideot, whoſe cuſtody the Law giveth to the King: So it is of a *non compos mentis*, and ſo it is of him *qui gaudet lucidis intervallis*, of an eſtate made during his lunacy; for albeit the parties themſelves cannot be deceived to diſable themſelves, yet twelve men upon this Office may find the truth of the matter. But if any of them alien by fine or recovery, this ſhall not only bind himſelf, but his heirs alſo.

Cooks 4th Rep. Beverlies caſe.

Non compos mentis cannot commit Felony, becauſe he cannot have a felonious intent. *Furioſus* (ſaith *Bracton*) *non intelligit quid agit, & animo & ratione caret, & non multum diſtat à brutis.* Neither can he commit Petty Treaſon, as if a woman *non compos mentis* kill her Husband; but in ſome caſes *non compos mentis* may commit high treaſon, as if he kill, or offer to kill the King, for He is *Caput & ſalus reipublicæ, & à capite bona valetudo tranſit in omnes*: and for this cauſe their perſons are priviledged, that none ought to offer volence to them, but he is *reus criminis læſæ majeſtatis*, and *pereat unus ne pereant omnes.*

Id. ib.

Of an Ideot which is ſo *à nativitate* the King hath *cuſtodiam*, of *non compos mentis* He hath only proviſion, that is, of a naturall Ideot, the King hath his Lands to his own uſe; but of *non compos mentis*, He hath not to his own uſe, but ſhall with the profits of the Land maintain him, his Wife, Children and Houſhold.

NOBILITY.

Cook on Lit. & 4th Rep. Nevils caſe

Nobility. In antient time the Senatours of *Rome* were elected *a cenſu* of their Revenues, ſo here in antient time, in conferring of Nobility reſpect was

was had to their Revenues, by which their dignity and nobility might be supported and maintained.

Gentry and Arms is of the nature of Gavelkind, for they descend to all the Sonnes, every Son being a Gentleman alike, which Gentry do not descend to all the Gentry alone, but to all their posterity. But yet *jure primogenitura* the eldest shall bear a badge of his birth-right, his Fathers Arms without any difference, for he (as *Littleton* saith) is more worthy of blood; but all the younger Brethren shall give severall differences, *& additio probat minoritatem.* *Cook on Lit.*

The Common Law calls none noble under the degree of a Baron, and not as men of forraign Countries, with whom every man of gentle birth is accounted noble; for we daily see that both Gentlemen and Knights do serve in Parliament as Members of Commonalty; The Law hath conceived such an opinion of the peaceable disposition of Noble-men, that it hath been thought enough to take one of their promises upon his honour, that He would not break the peace against a man. The person of a Baron (who is a Peer of Parliament) shall not be arrested by his body, 1. In respect of their dignity: 2. Because the Law presumeth that they have sufficient Lands and Tenements wherein they may be distrained; yet in case of contempt they may be arrested by a *Capias* or attachment. *Lamberts Justice of P. c. 13.* *Pulton's Justice of peace.* *Id ib.*

About 200 Gentlemen have got honour in their Famalies by the study of our Common Law. *Cooks Preface to the 2d part of his Reports*

Every Baron of the Parliament ought to have a Knight returned of his Jury, every Earl or Baron shall be amerced a 100 li. The eldest Sons of Earls or Viscounts are not Barons in Law, but in *Cooks 6th Rep. Countess of Rutlands case.*

in reputation. Thoſe which of antient time were created Earls were of the blood Royal; and to this day the King in all his appellations ſtiles them *per nomen charisſimi conſanguinei noſtri*, and therefore their bodies ſhall not be arreſted for debt, treſpaſs, and they ſhall not be put in Juries.

Cooks 9th Rep. the Countee of Salops caſe, the King calls them Companions and Coſens, Comites & conſanguineos.

Thoſe which were Earls were created for two purpoſes: 1. *Ad conſulendum regem & patriam tempore pacis.* 2. *Ad defendendum regem & patriam tempore belli:* and therefore antiquity hath given them two enſigns to reſemble theſe two duties.

Cooks 7th R p. Nevils caſe.

1. Their head is adorned with a Cap of honour, and a Coronet; and their body with a Robe in reſemblance of Counſell.

2. They are girt with a Sword, to ſhew that they ſhould be faithfull, and loyall to defend their Prince and Countrey.

NUSANS.

Nuſans. A man ſhall not have an action upon the Caſe for a Nuſans done in the high-way, for it is a common Nuſans; and then it is not reaſon that a particular perſon ſhould have an Action. For by th ſame reaſon that one perſon ſhould have an Action for this, every one may have an Action for it, and then he ſhall be puniſhed a 100 times for one and the ſame cauſe. But if any particular perſon after the Nuſans made hath a more particular dammage then any other, for this particular injury he ſhall have a particular Action upon the Caſe.

Nocumentum, *it comes of the French* nuire, *id eſt*, nocere *Cooks 5th Rep. Williams caſe.*

O.

O.

OATH.

AN *Oath* is an affirmation or denyal by any Chriſtian of any thing lawfull and honeſt, before one or more, that have authority to give the ſame for advancement of truth and right, calling Almighty God to witneſs that his teſtimony is true. It is called a corporall Oath, becauſe he toucheth with his hand ſome part of the Holy Scripture. *Cook's 3 part of Inſtit. c.* 74.

The Law eſteems it the beſt means to ſearch out the truth, by the Oaths of honeſt lawfull and indifferent perſons, as *God ſhall help him*, that is, as he will expect the bleſſing of God in this life, and eternal ſalvation in the life to come: therefore an Oath is aptly termed *Sacramentum*, an holy band, or ſacred tie, or godly vow: ſome do call it *Firmamentum veritatis*, the foundation and ground of truth: and ſome *vinculum pacis*, and if it be taken and found by a whole Jury, conſiſting upon twelve perſons or above, it is called *Veredictum*, *viz.* a preſentment of truth.

See more in Cook's 3 part of Inſtitutes c. 74.

Pulton de pace Regis & regni.

OBLIGATION.

Obligation, is a word of his own nature of large extent, but it is commonly taken in the Common Law, for a Bond containing a penalty with Condition for payment of Money, or to do, or ſuffer any act or thing, and a Bill is moſt commonly taken for a ſingle Bond without Condition.

Cook on Lit. l. 3. *c.* 1. *ſect.* 259.

If

Cook on Lit. l. 3. c. 5.

If a man be bound in an Obligation with Condition, that if the Obligor do go from the Church of St. *Pet.* in *Westminster*, to the Church of St. *Pet.* in *Rome* within three hours, that then that Obligation shall be void: the Condition is void, and impossible. If a man be bound to pay no pound at any time at a place certain, the Obligor cannot render the Money at the place when he will, for then the Obligee should be bound to perpetuall attendance, and therefore the Obligor in respect of the incertainty of the time must give the Obligee notice that on such a day at the place limited he will pay the Money, and then the Obligee must attend there to receive it; for if the Obligor pay the money, He shall save the penalty of the Bond for ever.

Cook on Lit. l. 3. c. 5. sect. 340.

Whereas a man is bound to pay 10 li. at such a day and place, if the Obligee accept a less summe at the same day and place, this appears to the Court to be no satisfaction of the greater, but acceptance of the less at a day before it is due, or at another place, or of some other thing (as of an horse) may be a satisfaction

Cooks 5th Rep Pinnels case.

When any act to be done by condition, is to be done by the sole act, or labour, or industry of a stranger, which act in no manner concerns the Obligor, Obligee, or any other person, and no time is limited when this shall be done, it sufficeth the Obligor, if the act be done in the life of him which ought to do this, as if I am obliged to you on condition, that *J. S.* shall go to *Rome* or *Jerusalem*, or that such a Student in Divinity at the University shall preach at *Pauls*, or in the Law, shall argue the matter in Law in *Westminster Hall*, in these cases no time being limited, they have time to do it during their lives.

Cooks 6th Rep. Bothies case,

OCCU-

OCCUPATION.

Occupation, is a word of Art, and ſignifieth a putting out of a mans Free-hold in time of warre, and it is all one with a diſſeiſin in time of peace, ſaving that it is not ſo dangerous. *Cook on Lit. l. 3. c. 5. ſect. 412.*

OFFICE.

Office. If an Office be granted to two *pro termino vitarum ſuarum*, by the death of one of them the grant ſhall be void; for being an Office of truſt there ſhall be no ſurvivour of it. But if it be expreſsly granted to two, *& diutius eorum vivent*, the ſurvivour ſhall have it. *Cook's 11th Rep. Curles caſe.*

Officia Judicialia non concedantur antequam vacent: Judicial Offices cannot be granted in reverſion, but miniſterial may. *Id. ib.*

By the Law of *England* it is provided that no Officer or miniſter of the King ſhall be ordained or made for any gift or brocage, favour or affection; nor that any which purſueth by him, or any other privily or openly to be in any manner of Office, ſhall be put in the ſame Office or in any other, but that all ſuch Officers ſhall be made of the beſt, and moſt lawfull men, and ſufficient. A Law worthy to be written in Letters of gold, but more worthy to be put in due execution. *Anno 12. R. 2. c. 2. Cook on Lit. l. 3. c. 5. ſect. 3. 8.*

An Office of skill and diligence, or annuity *pro conſilio impendendo*, cannot be forfeited by attainder of treaſon. The King graunteth an Office to one at will, and to his heir during life *pro officio illo*: now if the King put him from this Office, the fee ſhall ceaſe.

The Officer or Miniſter of Law in the execution of his Office, if he be reſiſted or aſſaulted, is not bound to fly to the wall (as other Subjects are) for *Legis miniſter non tenetur in executione officii fugere ſeu retrocedere.* *Cook 5th Rep. Mackallyes caſe.*

If

Cook on Lit. If a Justice of the Common Place be made Justice of the Kings Bench, though it be but *hac vice*, it determineth his Patent of the Common Place; for if he should be Judg of both Benches together, he should controll his own judgment: for if the common place erre, it shall be reformed in the Kings Bench. But a man may be Justice of the Common Pleas, and Chief Baron of the Exchequer *simul & semel*.

Plowdens Commentaries & Manninghams case. These words *colore officii* are alwaies taken *in malam partem*, and vary from these words *virtute officii*, or *ratione officii*, which are alwaies taken *in bonam partem*, and imply that the Office is the just cause of the thing and the thing is pursuing the Office: but the other words signifie an act ill done by pretence and countenance of the Office, and it carrieth the counterfeit shew of duty, and the act it self hath a proper name, and is called Extortion. As if an Officer will take more for his fees then he ought, this is done *colore officii sui*, but yet it is not part of his Office, and it is called Extortion, which is no other then robbery; nay more hatefull, in as much as the other is apparent, and hath the visor of vice: but this appeareth under the visage of virtue, and so is more hard to be avoided, and by so much the more detestable.

OXGAUGE.

Plo. Com. 168. *Oxgange*, or *oxgate*, *Bovata terræ*, a word much used in our old Books, and is as much land as an Ox can till, by the grant of an Oxgauge of land may pass Medow and Pasture.

ORDINARY.

Cook on Lit. l. 3. c. 11. sect. 641. *Ordinary*, is he that hath Ordinary jurisdiction in causes Ecclesiasticall, immediate to the King and his Courts of Common Law for the better execution of Justice; as the Bishop or any other that hath

hath exempt and immediate jurisdiction in causes Ecclesiastical.

It is derived *ab ordine*, to put him in mind of the duty of his place, and of that order and Office that he is called unto. *Cook's 2 part of Institutes c. 19. See more there.*

ORDÆL ORDALIUM.

Ordæl ordalium, in the Saxon language ordæl, which is as much to say, as *Expers criminis*, for in that language is privative, and *del* is part, that is, not party, or not guilty *.

Ordalium Saxonibus & Anglis, dicebatur probatio per aquam gelidam vel fervidam, aut candens ferrum. Candentium vomerum judicium subiit summa mater Regis Edvardi Confessoris. Vossius De vitijs Sermonis l. 12. c. 14. * *Cook l. 9. de Strata Marcella.*

Or signifies right. *deale* part (say some) whereof they had these kinds: or deal by fire which was for the better sort, and by water for the interiour. That of fire was to go blindfold over certain plough-shares made red hot, and layed an uneven distance one from another. that of water was either of hot, or cold, in the one to put their arms to the elbow, in the other to be cast head-long.

OUTLAWRIE.

Outlawrie, is the loss or deprivation of the benefit belonging to a Subject, that is of the Kings protection and the Realm. Heretofore none could be out-lawed but for felony, the punishment whereof was death, but now the Law is changed. An out-lawed man had then *caput lupinum*, because he might be put to death by any man, as a Wolf that hatefull beast might.

Dicitur Utlagatus quasi extra legem positus.

P.

P.

PAINE FORT ET DURE.

Paine fort & dure is a ſpeciall puniſhment for ſuch as being arraigned for felony, refuſe to put themſelves upon the common tryall of *God and the Countrey*, and thereby are mute. Such a one ſhall be ſent back to the priſon whence he came, and be laid in ſome low dark houſe where he ſhall lie naked upon the earth, without any litter or other clothing, and without any rayment, ſave only to cover his privy Members, and he ſhall lie upon his back, with his head covered and his feet. And one arm ſhall be drawn to one quarter of the houſe with a cord, and the other arm to another quarter, and iron or ſtone ſhall be laid on his body ſo much as he can bear; and the next day following he ſhall have three morſels of barley Bread Without drink and puddle water next unto the priſon door, which pain may be called *fort*, in that it is ſo ponderous and grievous that he cannot bear or ſuſtain it; and *dure* becauſe he ſhall not have releaſe of it during his life, but ſhall die in it.

Stamford pl.Cor.l.2. c.1.

Id. Ib.

PANNELL.

Pannell, is an Engliſh word, and ſignifieth a little part, for a pane is a part, and a pannell a little part (as a pannell of wainſcot, a pannell of a ſaddle, and a pannell of parchment, wherein the Jurors Names be written, and annexed to the Writ; And a Jury is ſaid to be impannelled) when

Cook on Lit. l.2.c.2. ſect.234.

when the Sheriff hath entred their Names into the panneil, or little piece of parchment *in panneilo Assisæ.*

PARAVAILE.

Paravaile. He is called Tenant paravaile, because the Law presumeth that he hath benefit and availe over the services which he payeth to the Lord. *Cook 9th Rep. Cony's case.*

PARCENERS.

Parceners. If a partition be made between two Coparceners of one and the self same land, that the one shall have the land from *Easter* untill *Lammas*, and to her heirs; or the one shall have it the first year, and the other the second year *alternis vicibus*, there it is one self same land wherein two persons have severall Inheritances at severall times. So it is if two Coparceners have two severall Mannors by descent, and they make partition, that the one shall have one Mannor for a year, and the other the other Mannor for the same year, and after that year, then she that had the one Mannor shall have the other, *& sic alternis vicibus* for ever. *Cook on Lit. l. 1. c. 1. sect. 1.*

If an Earl that hath his dignity to him, and his heirs dieth, having issue one daughter, the dignity shall descend to the daughter, for there is no incertainty, but only one daughter, the dignity shall descend unto her and her posterity, as well as any other Inheritance: but where there be more daughters then one, the eldest shall not have the dignity and power of the Earl, that is to be a Countess, but the King who is the Sovereign of Honour and Dignity, may for the incertainty conferre the dignity upon which of the daughters he pleaseth. But *Cook on Lit. l. 3. c. 1. sect. 241.*

there is a difference between a dignity or name of nobility, and an Office of Honour. For if a man hold a Mannor of the King to be high Conſtable of *England*, and die having iſſue two daughters, the eldeſt daughter taketh Husband, he ſhall execute the Office ſolely, and before marriage it ſhall be executed by ſome ſufficient Deputy. But the dignity of the Crown of *England* is without all queſtion deſcendible to the eldeſt daughter alone and her poſterity, and ſo it hath been declared by Act of Parliament: for *Regnum non eſt diviſibile*.

Id. ib.

They are called Parceners, becauſe by the Writ which is called *De partitione facienda*, the Law will compell them to make partition of the Land. There is an Action in the Civil Law very like to this, called *Actio familiæ herciſcundæ*.

PATRON.

Patron. Pollard 12. *H* 8. doth well diſtinguiſh the intereſt of the Parſon, Patron and Ordinary, the Parſon (ſaith he) hath a ſpiritual poſſeſſion in the Church, the Ordinary hath charge of the Church to ſee the cure ſerved, the Patron *jus præſentandi* to the Church.

PARSON.

Parſon. Perſona in the legall ſignification is taken for the Rector of a Church parochial, and is called *Perſona Eccleſiæ*, becauſe he aſſumeth and taketh upon him the Parſon of the Church, and is ſaid to be ſeiſed *in jure Eccleſiæ*, and the Law had an excellent end herein, *viz.* that in his perſon the Church might ſue for and defend her right; and alſo be ſued by any that had an elder and better right: and when the Church is full, it is ſaid to be *plena & conſulta* of ſuch a one Parſon

Cook on Lit. l. 3. *c.* 9. *ſect.* 528.

Parſon thereof, that is, full and provided of a Parſon that may *vicem ſeu perſonam ejus gerere, perſona impersonata*: Parſon Impersonee is the Rector that is in poſſeſſion of the Church parochiall, be it preſentative or impropriate, that may *vicem ſeu perſonam ejus gerere.* If a Parſon of a Church waſte the Inheritance of his Church to his private uſe in cutting down the Trees, the Patron may have a Prohibition againſt him, for he is ſeiſed in righ of his Church, and his glebe is the dower of his Church. *Id. ib.* *Cook 9th Rep. Liſords caſe.*

PARLIAMENT.

Parliament, is the higheſt, and moſt honourable, and abſolute Court of Juſtice of *England*, conſiſting hereroſore of the King, the Lords of Parliament and the Commons. And again, the Lords, *viz.* Spiritual and Temporall. And Commons are divided into three parts, *viz.* into Knights of Shires or Counties, Citizens out of Cities, and Burgeſſes out of Buroughs. All which have voices and ſuffrages in Parliament. Of the Members of the Court, ſome were by deſcent, as antient Noblemen; ſome by creation, as Nobles newly created; ſome by ſucceſſion, as Biſhops; ſome by election, as Knights, Citizens and Burgeſſes. Si vetuſtatem ſpectes eſt antiquiſſima, ſi dignitatem eſt honoratiſſima, ſi juriſdictionem eſt capaciſſima. *Cook on Lit. l. 2. c. 10. ſect. 164.*

In the Lords Houſe, the Lords give their voices from the paiſne Lord *ſeriatum* by the word of (Content) or (not Content.) The Commons give their voices upon the queſtion, by Yea or No, and if it be doubtfull, and neither party yeeld, two are appointed to number them, one for the Yea, another for the No: the Yea going our, and the No ſitting: and thereof report is made to the Houſe. *Cook's 4 part of Inſtit. c. 1.*

It is called Parliament, becauſe every Member of the Court ſhould ſincerely and diſcreetly *parler*

Id. ib. & Preface to the 5th Rep.

la ment for the generall good of the Commonwealth. This Court the French calleth *Les estats*, or *l. assemblee des estats*: in *Germany* it is called a Diet. It is legally called in Writs and judiciall proceedings, *Commune concilium Regni Angliæ*.

The jurisdiction of this Court is so transcendent, that it maketh, inlargeth, diminisheth, abrogateth, repealeth, and reviveth Laws, Statutes, Acts and Ordinances concerning matters Ecclesiasticall, capitall, criminall, common, civill, martial, maritime, and the rest.

Judge Doderidge. An Ordinance in Parliament differs from an Act that is ordained by one or two of them. Cook's Instit. 4th part c. 1. Cook l. 8. of Rex. case, de Prin. 20 b. 11. H. 7 27 7. H. 4

The efficient causes of an Act of Parliament were the assent of the Estates, *viz.* 1. Of the King. 2. Of the Lords Spirituall and Temporall. And, 3. Of the Commons: and each without the other cannot perfect this work; and yet untill the royal assent, it was but *embrio in ventre matris*, and by the royal assent coming last it took life and vigour. The Assembly of the three Estates, *viz.* the King, Nobility and Commons, which make the body of the Realm, was called a Parliament. For without all three (as if it be done by the King and Lords, but nothing spoken of the Commons) it was no Act of Parliament. And although the Lords and Commons agree to it, yet it was not an Act untill the King had assented also, and his assent alwaies comes after their assent, and commonly this is the last day of Parliament. from this day forward it was an Act, and not before, for before the Kings assent, it was an issue in the Mothers womb, which is not perfect untill it be born, for the Statute was not full and perfect untill his assent given to it. But it shall be counted an Act from the first day of the Parliament, unless the certain time be specified when the Act shall first take effect. But if the Parliament have divers prorogations, and in the second or

Ployden Partridge against Strat. fol. 79. B.

third

third Session an Act is made, this shall not have relation to the day of the beginning of the Parliament, *viz.* to the first day of the first Session, but only to the first day of the same Session, in which it is made.

Of Acts of Parliament some are introductory of a new Law, and some are declaratory of the antient Law, and some are of both kinds by addition of greater penalties or the like. *Cook's 4th part of Instit. c.1.*

One of the principall ends of calling of Parliaments is for the redress of the Imischiefs and grievances that daily happen. *Cook's 4th part of Instit.c.1.*

PARQUE.

Parque, is a French word, and signifieth that which we vulgarly call a Parke, of the French verb, *parquer* to inclose, it is called in Domesday *Parcal*, in Law it signifieth a great quantity of ground inclosed, priviledged for wild Beasts of chase by prescription, or by the Kings Grant; The forfeiture for hunting or killing of *Deer* in a Park, is 10 ll. or else treble damnages. *Cook en Lit. l.3.c.5. sect.378. 7 timo Jacobi.*

PEACE.

Peace, The Law of our Land useth the word Peace diversly: Sometimes it is taken for protection or defence, so *Bracton* calleth the Writs of protection *Brevia de pace*. Sometimes it is taken for Rights, Priviledges, and Liberties, as in the Oath of the King at his Coronation: He sweareth *servare ecclesiæ Dei, cleri & populi pacem ex integro*, that he will maintain each degree, and estate of his Subjects, as well Ecclesiasticall as Temporall. according to their severall Customes, Laws and Priviledges, sometimes for an abstinence from *Lamberts Justice of Peace.*

Lamberts Juſtice of peace, Fulton. injurious force and violence, ſo it is commonly taken, menacing beginneth the breach of the Peace, aſſaulting increaſeth it, and battery accompliſheth it.

PERJURY.

Perjury, if a man ſwear to one that he will pay to him twenty pound which he oweth him at a certain day, and at the day faileth of the paiment, he may not be ſued in the ſpirituall Court for the perjury, becauſe an Action of debt lieth at the Common Law for for the principall. But 34 *H.6.* it is ſaid, that if a man buy an Horſe for five pound, *ſolvendum*, ſueh a day, and ſweareth to make payment at the day, but when the day is come, faileth of payment, an Action of debt lyeth at the Common Law, and another at the Spirituall Law, *pro læſione fidei.*

If a man calleth another perjured man, he may have his Action upon his Caſe, becauſe it muſt be intended contrary to his oath in a judiciall proceeding: but for calling him a forſworn man, no Action doth lie, becauſe the forſwearing may be *extra judiciall.* *Cook's 3 part of his Inſtit. c.* 74.

PILLORY.

Colliſtrigium Cowell. *Pillory*, cometh of the French *pilorie*, which proceeds from πυ'λη *janua*, and ὁρᾶω *video*, becauſe one ſtanding on the Pillory, putteth his head through a kind of door.

Curia pedis pulverizati. *Judge Doderidge, Cowels Inſtit.*

PIPOWDERS.

Pipowders, is a Court belonging to Markets and Fairs, to yeeld Juſtice to the buyers and ſellers coming thither, which becauſe they are moſt frequented in Summer, the word was given of the duſty feet of the comers, from two French words

words, *pies pouldrez*, id eſt, *pedes pulvere inquinatos.*

PLEAS.

Pleas. All purſuits and actions (we call them in our Engliſh tongue Pleas) and in barbarous, (but now uſuall Latin) *placita*, taking the name abuſive, of the definitive ſentence, which may well be called *placitum*, or ἀπόφασις. The French call it areſt, in which word after their cuſtom, they do not ſound the ſ. But we call *placitum* the action, not the ſentence: and *placitare* barbarouſly for to plead in Engliſh *agere*, or *litigare*. *Smiths Commonw. of England c. 9.*

Pleas are divided into Pleas of the Crown, and into Common or Civil Pleas. Pleas of the Crown are Treaſon and Felony, and miſpriſion of Treaſon and Felony; They are *Communia placita*, not in reſpect of the perſons, but in reſpect of the quality of the Pleas. *Cook's 4th part of Inſtit. c. 10.*

All thoſe Pleas which touch the life or mutilation of man, are called Pleas of the Crown, and cannot be done in the name of any inferiour perſon, then He or She that holdeth the Crown of *England*. And likewiſe no man could give pardon thereof, but the Prince only. *Id. c. 4.*

POSSESSION.

Poſſeſſion. Poſſeſſio eſt quaſi pedis poſitio.

In æquali jure melior eſt conditio poſſidentis, He that hath poſſeſſion of Land, though it be by diſſeiſin, hath right againſt all men, but againſt him that hath right. *Dr. & Stud. c. 9.*

Poſſeſſion is either 1. Actuall (*poſſeſſio in facto*) when a man entreth in deed into Lands or Tenements to him deſcended: 2. Or poſſeſſion in Law *poſſeſſio Civilis*, when Lands or Tenements

are deſcended to a man, and he hath not as yet
Cook on Lit. actually, and indeed entred into them.

Poſſeſſion muſt have three qualities, it muſt be 1. Long, 2. Continual, and 3. Peaceable.

POUND.

Either a Pinfold made for ſuch purpoſes in his own Cloſe, or anothers with his conſent.

Pound, is either overt and open, ſo called becauſe the owner may give his Cattell meat and drink without treſpaſs to any other, and there the Cattell muſt be ſuſtained at the perill of the owner, or covert and cloſe, as if one impound the Cattell in ſome part of his houſe, and then the Cattell are to be ſuſtained with meat and drink at the perill of him that diſtreineth, and he ſhall not have any ſatisfaction therefore.

Cook on Lit. l. 1. c. 7. ſect. 58.

If a man diſtrain Cattell for dammage Feaſant, and put them in the pound, and the owner that had common there make freſh ſuit, and find the door unlocked, he may juſtifie the taking away of his Chattell in the Writ of *à Parco fracto*. If the owner break the Pound, and take away his goods the party diſtreining may have his Action *de parco fracto*, and he may alſo take his goods that were diſtreined whereſoever he find them, and impound them again.

PRÆMUNIRE.

Cook on Lit. & Preface to the 7th Rep.

Præmunire, is to be adjudged out of the Kings protection, to loſe all their Lands and Goods, and to ſuffer perpetuall impriſonment.

Some hold an opinion, that the Writ is ſo called a *præmunire*, becauſe it doth fortifie *juriſdictionem jurium regionum Coronæ ſuæ*, the Kingly Laws of the Crown againſt forreign juriſdiction, and againſt the uſurpers upon them, as by divers Acts of Parliament appear. But in truth it is ſo called of a word in the Writ, for the words

words of the Writ are, *præmunire facias præfatum* A. B. *quòd tum sit coram nobis*, where *præmunire* is used for *præmonere*, and so do divers Interpreters of the Civil and Canon Law use it, for they are *præmuniti* that are *præmoniti*, so odious was this Offence of *præmunire*, that a man that was attainted of the same, might have been slain by any man without danger of Law, because it was provided by Law, that a man might do to him as to the Kings enemy, and any man may lawfully kill an enemy. But Queen *Elizabeth*, and her Parliament liking not the extream and inhumane rigor of the Law in that point, did provide that it should not be lawfull for any person to slay any person in any manner attainted, upon any *præmunire*. *Cook on Lit. l. 2 c. 11. sect. 199.* *5 of Eliz. c. 1.*

If a man kill one which is attainted by a *præmunire*, this is not felony, for he is out of the Kings protection, but it is contrary if one kill another, that is attainted of felony, and judged to die, but now by the Statute of *Eliz.* it is felony to kill one attainted by a *præmunire*. *Brooks abridg. fol. 181. B.*

Prebenda a præbendo auxilium, & consilium Episcopo. *Cook.*

PREROGATIVE.

Prerogative, *Littleton* speaketh of the Kings prerogative but twice in all his Books, *viz. sect.* 126. and 178. and in both places as part of the Laws of *England*, *prerogativa* is derived of *præ*, id est, *ante*, & *rogare*, that is, to ask or demand before hand, whereof cometh *prærogativa*, and is denominated of the most excellent part, because though an Act hath passed both the *Cook on Lit. l. 2. c. 5. sect. 125.*

Prerogativa *is a privilege or prehemi-*

nence that any person hath before an other, which as it is tolerable in some, so it is most to be permitted and allowed in a Prince. Stamford. Camdens Brit.

Houses

Houſes of the Lords and Commons in Parliament, yet before it be a Law, the Royall aſſent muſt be asked, or demanded, and obtained, and this is the proper ſence of the wold. But legally it extends to all powers, preheminences, and priviledges, which the Law giveth to the Crown, *Bracton* l. 1. in one place calleth it *libertatem*, in another *privilegium Regis*. The King hath many rights of Majeſty peculiar to himſelf (the learned Lawyers term them *ſacra ſacrorum*, that is, ſacred, and *individua*, inſeparable, becauſe they cannot be ſevered, and the common ſort *royall Prerogatives*, which they term the flowers of his Crown, in which reſpect they affirm, that the regall materiall Crown is adorned with flowers.

Stamfords prerogativ.

His perſon ſhall be ſubject to no mans ſuit, his poſſeſſions cannot be taken from him by any violence, or wrongfull diſſeiſin, his goods and chattels are under no tribute, toll, nor Cuſtom, nor otherwiſe diſtreinable.

The peoples liberty ſtrengthens the Kings Prerogative, and the Kings Prerogative is to defend the peoples liberties, King *Charles* his ſpeech, in the 3d of his Reign.

The King may licence things forbidden by Statutes; As to coyn money which is made felony by the Statute, and was before lawfull, for that is but *malum prohibitum*, but *malum in ſe*, as to leavy a nuſance in the High-way, he cannot licence to do, but when it is done he may pardon it. All white Swannes not marked, which have gained their naturall Liberty, and are ſwimming in an open and common River, may be ſeaſed to the uſe of the King by his Prerogative, the Swanne is a royall Bird, and ſo the Whale, and Sturgeon are royall Fiſhes, and belong to the King by his Prerogative. All thoſe things, the property of which

Cooks 7th Rep.

which is not known, belong to the King by his Prerogative.

A grant to the King, or by the King to another, is good without attonement by his prerogative. *Cook on Littleton.*

PRESCRIPTION.

Preſcription, is three-fold, *viz.*

1. Perſonall, as the Inhabitants of a Town may preſcribe for a way, *&c.*

2. Reall, as incident to an eſtate, as for a man to preſcribe that he and they whoſe eſtate he hath had common, *&c.*

3. Locall, as where a man doth preſcribe that within ſuch a Mannor, *&c.*

Preſcription, is a title taking his ſubſtance of uſe, and time allowed by the Law, as *J.S.* ſeiſed of the Mannor of *D.* in fee, preſcribeth thus, that *J.S.* his Anceſtors, and all thoſe whoſe eſtate he hath in the ſaid Mannor, have time out of mind of man had, and uſed to have Common of paſture in ſuch a place, being the Land of ſome other, as pertaining to the ſaid Mannor. This properly we call a preſcription. *Cook on Lit. l.2. c.10. ſect.170.* Preſcriptio eſt titulus ex uſu & tempore ſubſtantiam capiens. *Cook on Lit. l.2.c.10.*

Preſcription ſhall hold ſometime againſt the King, in ſuch things as a man may preſcribe in, as one ſhall preſcribe for wayſe and ſtraiſe againſt the King. The King may alſo outſtay his time, if it be found the Tenant for term of life, hath forfeited his eſtate to the King, whereby the King ought to ceaſe, if his grace ſeaſe not, but tarry till he be dead, ſo that he in the reverſion entreth, he cannot then ceaſe, ſo that maxim is not univerſally true, *Nullum tempus occurrit Regi.* *Stamf. of the prerog. c. 8.*

The Statute *de prærogativa Regis*, *quòd nullum tempus occurrit Regi*, is to be underſtood when the

Cooks 7th Rep. Baskervilles Case.

the King hath an Eſtate or Intereſt certain and permanent, and not when his intereſt is ſpecially limited; for the time is the ſubſtance of his title, and in ſuch caſe *ocurrit Regi*.

PRESENTMENT.

Preſentment, comes of the *French* word *preſenter* to ſet before one: and in the underſtanding of the Law is a meer denunciation of the Jurors themſelves, or of ſome other Officer, as Juſtice, Conſtables, Surveyors, *&c.* moſt commonly *de proprio viſu* without the information or the proſecution of a third party of any offence inquirable in the Court whereunto it is preſented. *Lamb. Eirenarch.* pa. 467.

PRESUMPTION.

Cook on Lit. l. 1. c. 1. ſect. 1.

Preſumption. There be three ſorts of preſumptions: 1. Violent, which is many times *plena probatio*; as if one be run through the body with a ſword in an houſe, whereof he inſtantly dieth, and a man is ſeen in the houſe to come out with a bloody ſword, and no other man was at that time in the houſe. 2. Probable which moveth little: 3. *Levis ſeu temeraria*, which moveth not at all. So in a caſe of a Charter of feoffment, if all the Witneſſes to the Deed be dead, then violent preſumption which ſtands for a proof is continual and quiet poſſeſſion.

Preſumptio ſtat in dubio: it is doubted of, and yet it is accounted *veritatis comes quatenus in contrarium nulla eſt probatio ut regula ſe habet, ſtabitur preſumptioni donec probetur in contrarium.*

PRISON.

See Impriſonment.

Stam. l. 1. cap 26.

Priſon. Every ſuffering of a Priſoner to eſcape is a breach of priſon. If a man arreſt one for felony, and after let him go at large whether he will, if he be arreſted for felony, it is Felony; if for Treaſon, it is Treaſon; if for a treſpaſs, it is a treſpaſs, *&c. ſic de ſingulis.*

R I-

PRIVITIE.

Privitie, is a word common as well to the *English* as to the *French*, and in the understanding of the Common Law is four-fold: 1. Privies in estate as between the Donor and Donee, Lessor and Lessee, which privitie is ever immediate. 2. Privies in Blood, as the Heir to the Ancestor, or between Coparceners. 3. Privies in representation, as Executors to the Testator. And 4thly, Privities in tenure, as the Lord and Tenant which may be reduced to two generall Heads, Privies in Deed, and Privies in Law.

Cook on Lit. l. 3. c. 8. sect. 461. & Beverlies case. non compos mentis.

PRIVILEDGE.

Priviledge, *privilegium* is *jus singulare*, whereby a private man, or a particular Corporation is exempted from the vigour of the Common Law, for that which is now called *proprium*, hath been called of old Writers *privum*.

PROCES.

Proces, it is called proces, because it proceedeth (or goeth out) upon former matter, either original or judicial.

This word proces hath two significations, it is largely taken for all proceeding in all reall and personall actions, and in all criminall and common Pleas, and *processus derivatur à procedendo usq; ad finem.* 2. More safe for the proceeding after the originals is but of the plea before judgment.

The difference between proces and the precept or warrant of the Justices. The precept or Warrant is only to attach and convent the party before any Indictment or conviction, and may be made either in the name of the King or of the Justice. Proces is alwaies in the name of the King, and usually after an Indictment found or other conviction; and because the King is

Cooks 8th Rep. Blackmores case.

is a party, it muſt alſo be with a *non omittas propter aliquam libertatem.*

PROOF.

Proof. Bracton ſaith there is *probatio duplex*, viz. *viva*, as by Witneſſes, *viva voce*, and *mortua*; as by Deeds, Writings, Inſtruments. A Wife cannot be produced either againſt or for her Husband, *quia duæ ſunt animæ in carne una*, and it might be a cauſe of implacable diſcord between the Husband and the Wife, and a mean of great inconvenience; but in ſome caſes Women are by Law wholly excluded to bear teſtimony, as to prove a man to be a villein; *Mulieres ad probationem ſtatus hominis admitti non debent.*

Cook on Lit. l.1.c.1. ſect.1.

PROPERTY.

Property, if Plate be ſtollen, and ſold openly in a Scriveners Shop, on the Market day, as every day is Market day in *London*, ſaving Sunday, this ſale ſhall not change the property, but the party ſhall have reſtitution: for a Scriveners Shop is not a Market overt for Plate, for none will ſearch there for ſuch a thing, but if the ſale had been openly in a Gold-ſmiths Shop in *London*, ſo that every one which paſſed by the Shop might have ſeen it, this would have altered the property; But if the ſale be in a Gold-ſmiths Shop, either behind a hanging or cupboard, ſo that one paſſing by the Shop cannot ſee it, this ſhall not change the property, ſo if the ſale be not in the Shop, but in a Warehouſe, or other place of the Houſe, this ſhall not change the property, for it is not in a Market overt, and none will ſearch there for his Goods.

Cooks 5th Rep. caſe. of Market overt.

There can be no property of Birds, Fowls, Wild Beaſts, in any perſon, unleſs they be tame, nevertheleſs, the Hawks, or Herons that build in

Dr. & Stu. c. 5.

in the ground of any person, be adjudged to belong to him that oweth the Ground.

Some things there are, the property whereof the Law cannot vest in any, and therefore it leaveth them to the occupant, that is, to him that can seise them as things which are by nature *feræ naturæ*, as Beasts, Birds, or Fishes, being in their own liberty, and such things are no longer any mans, then when they are in his possession or custody, for when they have escaped and recovered their naturall liberty, then they cease to be his. The nature of Bees is wild, and therefore when a swarme of them lighteth upon thy tree, they are no more thine before they be covered with thy Hive, then Hawks which have made their nests in some of thy trees, or Doves in thy Dove-house, for though the young birds be thine, whereof thou maist bring an Action of trespass, *quare vi & armis pullas asperiorum suorum in boscis nidificantium*, or *Columbas Columbaris sui cepit*. Here he shall not use this word *suos* in his Writ, for that implyeth a contradiction. The nature of Doves is wild, neither is it materiall that by custom they are wont *avolare & revolare*, to fly from home, and return home, and in such things which are tame, and by custom are wont to depart, and yet to return, this rule is allowed, that so long they may be said to be thine, as they have *animum revertendi*. *Justinian l. 1. Instit.*

Felony cannot be committed in taking of Beasts that be savage, and unramed at the time of taking, nor for taking of Doves being at large in the River, for such taking is not *contrectatio rei alienæ, sed quæ est nullius in bonis*. But when such things are made tame by any labour, and cost, the property of them is changed, and the nature altered, and then if a man take them out of my possession, a man may have an Action. It is felony to take young Pigeons

Pigeons, or young Hawks out of their Nests before that they can fly, so to take Fishes kept in a Trunk. To take tame Deer is felony, if the taker know it to be tame. But the nature of Hennes and Geese is not savage, and therefore if they shall fly away, though they be past thine eye-sight, notwithstanding in what place soever they be, they cease not to be thine, and whosoever detaineth them, is punishable by way of action.

Stamf. l.1. c.16.

There be three manner of rights of property.

1. Absolute, this property a man cannot have in any thing which is *feræ naturæ*, but only in such things as are *domitæ naturæ*.

2. Qualified.

3. Possessory, these properties a man may have in things *feræ naturæ*, and he may attain to them.

1. By industry, either by taking them only, and yet such things are his no longer, then they be in his possession or custody, or by making them *mansueta*, id est, *manui assueta*, or *domestica*, id est, *domui assueta*: But in these past, a man hath but a qualified property, so long as they remain tame, and so long felony may be committed by taking them away, but if they attain to their naturall liberty, and have not *animum revertendi*, then the property of them is lost.

2. *Ratione impotentiæ & loci*, as where a man hath young Gosshawks, Herons, or the like, which are *feræ naturæ*, and do breed (or ayre) in his ground, he hath a Possessory property in them, so as if one take them when they cannot fly, the owner of the soyl may have an action of trespas, and to take these away is felony. But when a man hath Beasts, or Fowles that be savage, and in their wildness *ratione privilegii Scil.* by reason of a Parke, or Warrein, (as Deer, Hares, Conies,)

Conies,) Pheſants, or Partridges, he hath no property in them, therefore in an Action *quare parcum*, or *Warrenam, regit & intravit & treſodamos, lepores, cuniculos, phaſianos, perdices*, &c. *ib idem invenit, cepit, & aſportavit*, he ſhall not ſay *ſuos*, for that he hath no property in them, but they belong unto him, *ratione privilegii*, (for his gain and pleaſure, ſo long as they remain in the place priviledged. And if the owner of the Park die, his Heir ſhall have them, and not his Executor, or Adminiſtrators, for that without them the Parke (which is an Inheritance) is not compleat, neither can Felony be committed by taking them. *Cook 7th Rep. caſe of Swans.*

If a man find an Hawk that was loſt, and he do not forthwith bring it to the Sheriff to be proclaimed, but do ſteal and carry it away, this is felony.

If a man make Cony-burrows in his own land, which increaſe to ſo great number, that they deſtroy the Land of his neighbour next adjoyning, his neighbour cannot have an Action upon the Caſe againſt him, which makes the ſaid Cony-borrows, for now as the Conies come upon his Neighbours Land, he may kill them, for they are *feræ naturæ*, and he which makes the Cony-burrows hath no property in them, and he ſhall not be puniſhed for the dammages which the Conies made, in which he hath no property, and which another may lawfully kill, and it was reſolved in this caſe that none may erect a Dove-coat, but the Lord of the Mannor, and if any do, that he may be puniſhed in the Leet, but no Action of the Caſe lyeth by any particular man, for the infiniteneſs of the Actions which may be brought. *Cooks 9th Rep. Bulſtons caſe.*

PROTECTION.

Protection, there be three things whereby every Subject is protected, *viz. Rex, Lex, & rescripta Regis*, the King, the Law, and the Kings Writs.

Cook on Lit. l.2.c.11. sect.199. The Law is the rule, but it is mute, the King judgeth by his Judges, and they are *Lex loquens.* The proceſs and the execution which is the life of the Law, conſiſteth in the Kings Writs, ſo that he that is out of the protection of the King, cannot be aided or protected by the Kings Law, or the Kings Writs, *Rex tuetur legem & lex tuetur jus.*

PROVISO.

Cook on Lit. l.2.c.12. sect.220. *Proviſo*, this word hath divers operations ſometimes it worketh a qualification or limitation, ſometime a condition, and ſometime a covenant.

PUBLIKE.

Publike, neceſſity priviledgeth only *quoad jura privata*, for in all caſes if the act that ſhould deliver a man out of neceſſity to be againſt the Common-wealth, neceſſity excuſeth not for *privilegium non valet contra rempublicam*, as another ſaith, *neceſſitas publica major eſt quam privata.* If in danger of tempeſt thoſe that are in the Ship throw over other mens goods, they are not anſwerable: but if a man be commanded to bring Ordinance or ammunition to relieve any of the Kings Towns that are diſtreſſed, then he cannot for any danger of tempeſt juſtifie the throwing of them overboard. If Husband, and Wife joyn in committing treaſon, the neceſſity of obedience doth not excuſe the aſſence as it doth in ſelony, becauſe it is againſt the Common-wealth,

PUR-

PURCHASE.

Purchaſe, is when one cometh to Lands by conveyance, or title.

An Infant, or *minor*, (that is any that is under the age of twenty one years) hath without conſent of any other capacity to purchaſe, for it is intended for his benefit, and at his full age he may agree thereunto, and perfect it, or waive and diſagree to the purchaſe, and ſo may his Heirs after him, if he agreed not thereunto at his full age. A man of *non ſane memory* may without the conſent of any other purchaſe Lands, but he himſelf cannot waive it, but if he dy in his madneſs, or after his memory recovered without agreement thereunto, his heir may waive and diſagree to the ſtate, without any cauſe ſhewed. An Hermophradite may purchaſe according to the Sex which prevaileth. *Cook on Lit. l.1.c.1. ſect.1.*

A Wife (*Uxor*) is a good name of purchaſe, without a Chriſtian Name, and ſo it is if a Chriſtian Name be added, and miſtaken, as *Em* for *Emelin*, for *utile per inutile non vitiatur*. But the Queen the conſort of the King of *England* is an exempt perſon from the King by the common Law, and is of ability and capacity to purchaſe, and grant without the King. Purchaſes are good in many caſes by a known name, or by a certain deſcription of the perſon, without either ſirname, or name of Baptiſm, as *Uxori J.S.* or *primo genito filio*, or *filio natu minimo*, *J.S.* or *omnibus filiis*, *& filiabus*. A Baſtard having gotten a name by reputation, may purchaſe by his repured or known name, to him and his Heirs, although he can have no heir. Perſons deformed having humane ſhape, Ideots, mad men, Leapers, Baſtards, deaf, dumb, and blind *meers*, and all other reaſonable Creatures, have power to *Id. ib.*

purchaſe, and retain Lands or Tenements. A monſter born within lawfull matrimony, that hath not humane ſhape, cannot purchaſe, much leſs retain any thing. The ſame Law is, *de profeſſis & mortuis ſeculo*, for they are *civiliter mortui*. If the Tenant holdeth by fealty, and a buſhell of Wheat, or a pound of Comyn, or of Pepper or ſuch like, and the Lord purchaſeth a parcell of the Land, there ſhall be an apportionment, as well as if the rent were in money: and yet if the rent were in one grain of Wheat, or one ſeed of Comyn, or one Pepper-corn, by the purchaſe of paſt, the whole ſhould be extinct, becauſe when that thing which is extracted out of the Land comes to the Land again, it ſhall be naturally extinguiſhed, for that is *revolutio ad materiam primam*.

Cook on Lit. l. 2. c. 12. ſect. 222.

But if an intire ſervice be *pro bono publico*, as Knights ſervice, Caſtle gard, cornage *pro defenſione Regni*, for the defence of the Realm, or to repair a Bridge or a way, to keep a Beacon, or to keep the Kings Records, or for advancement of Juſtice and peace, as to aid the Sheriff, or to be Conſtable of *England*, though the Lord purchaſe part, the ſervice remaines, ſo it is if the Tenure be *pro opere devotionis ſive pietatis*, as to find a Preacher, or to provide the Ornaments of ſuch a Church, or *pro opere charitatis*, as to marry a poor Virgin, or to bind a Boy Apprentice, or to feed a poor man.

Cooks Rep. Bruertons & Calbots caſe.

Q

QUARRELS.

QUarrels, *Querela à querendo.* This properly concerneth perſonall actions, or mixt at the higheſt, for the Plaintiff in them is called *Querens*, and in moſt of the Writs it is ſaid *Queritur.* And yet if a man releaſe all quarrels (a mans deed being taken moſt ſtrongly againſt himſelf) it is as beneficiall as all actions, for by it all Actions reall and perſonall are releaſed. *Cook on Lit. l.3.c.8. ſect.511.* Litis nomen actionem ſignificat ſive in rem ſive in perſonam.

R.

RANSOME.

RAnſome, ſignifieth properly a ſumme of money, paid for the redemption of a Captive, and is compounded of *re* and *emo*, that is to redeem, or buy again. There is a manifeſt difference between a ranſome and an amerciament. For ranſome is ever when the Law inflicteth a corporall puniſhment by impriſonment, but otherwiſe it is of an amerciament. *Cook on Lit. l.2.c.11. ſect.194.*

RAPE.

Cook on Lit. l.2.c.11. sect.190. The offender is called Raptor.

Rape. Raptus is when a man hath carnall knowledge of a woman by force, and against her will. But if the woman conceive that is no rape, for she cannot conceive unless she consent.

Cook ib. Stamford.

This word Rape is so appropriated by Law to this case, as without the word (*rapuit*) it cannot be expressed by any periphrasis or circumlocution; for *carnaliter cognovit eam*, or the like will not serve.

L. Dyer term. Mich. Annis 13. & 14 Reg. Eliz. p.304

One *W. D.* was arraigned in the Kings Bench upon an Indictment of Rape of a Girl of 7 years old, and not above, *viz. quod ipsam felonicè rapuit & carnaliter cognovit.* He pleaded that he was a *Scot* known and prayeth for his triall *per mediatem linguæ*, and he could not have it; because a *Scot* is not accounted here for an Alien, but rather a Subject, and the *Scottish* Language is meer *English*. By good evidence of divers grave Women he was found guilty, but the Court doubts of the Rape in so tender years: but if she had been nine and over it would have been otherwise. In *Bracton's* time Ravishers were thus punished, they lost their eyes and stones, for they *calorem stupri induxerunt*.

Womans Laws.

REBOUTER.

Cook on Lit. l.3.c.12.

Rebouter, is a *French* word, and is in Latin *repellere*, to repell or bar; that is in the understanding of the Common Law, the Action of the Heir by the warranty of his Ancestor, and this is called to rebut, or repell.

RE-

RECORD.

Record, is derived of *recorder* to remember, as the Poet ſaith, *ſi ritè audita recorder*, if a Record once ſay the word, no man ſhall be received to averr or ſpeak againſt it, or impugne the ſame, no, though ſuch record contain a manifeſt or known falſehood, tending to the mitchief, and overthrow of any perſon.

The Records are *vetuſtatis & veritatis veſtigia*, the lively repreſentations of time and truth, and reputed the Treaſures of the Kingdom. *Cook pret. to 8th Rep.*

The Kings excellency is ſo high in the Law, that no Free-hold may be given to the King, nor derived from him but by matter of Record. *Dr. & Stu. c. 8.*

A Record or ſufficient matter in writing are good memorials, for *litera ſcripta manet*. And therefore it is ſaid when we will by any Record or Writing commit the memory of anything to poſterity, it is ſaid *tradare memoriæ*. And this is the reaſon that regularly a man cannot preſcribe or alledge a cuſtom againſt a Statute, becauſe that is matter of Record. *Cook on Lit. l. 2. c. 10. ſect. 170.*

Record is a memoriall or remembrance in Rolls of Parchment, of the Proceedings and Acts of a Court of Juſtice, which hath power to hold plea according to the courſe of the Common Law, of reall or mixt actions, or of actions *quare vi & armis*, or of ſuch perſonall actions, whereof the debt or dammage amounts to forty ſhillings or above, which we call Courts of Record, and are created by Parliament, Letters Patents, or preſcription, legally Records are reſtrained to the Rolls of ſuch only as are Courts of Record, and not Rolls of inferiour, nor of any other Courts which proceed not *ſecundum legem & conſuetudinem*

Cook on Lit. l. 3. c. 7. ſect. 431. & l. 2. c. 11. ſect. 175.

ſuetudinem angliæ, and the Rolls being the Records or memorials of the Judges of the Courts of Record,) import in them ſuch incontrolable credit and verity, as they admit no averment, plea or proof to the contrary. And if ſuch a record be alledged, and it is pleaded that there is no ſuch record, it ſhall be tried only by it ſelf, and not by witneſs or Jury.

REGISTER.

Cook on Lit. l.2.c.3. ſect.101. & c.12.

Regiſter, is the name of a moſt antient Book, and of great authority in Law, containing all the originall Writs of the Common Law: It is twofold, viz. *Regiſtrum brevium originalium, & regiſtrum brevium Judicalium*, it is a French word and ſignifieth a memoriall of Writs.

RELATION.

Relation, is a ſpecies of fictions in Law, making a thing done at one time to be accepted, reverted, and as it were repuld, or to have its operation as if it had been done at another time, paſt *verbi gratiâ*. *A.* doth bargain, and ſell Lands to *B.* in *Auguſt* by Indenture, which is not inrolled untill *Oct.* following, yet this hath ſuch relation to the date of the Indenture, that if *A.* offer that, and before the inrolment become bound in a ſtatute or grant a Rents charge, or make a Leaſe for years, or take a Wife, or committed felony, yet ſhall none of theſe be of any force to charge or prejudice the ſtate of *B.* for that the Law judgeth him now owner by relation, as from the time of the date, yet if a ſervant depart in *Auguſt*, for ſome great breach with his Maſter, do kill his Maſter in *October*, this is in Law petty treaſon, as if he had continued ſervant when he did the fact, becauſe it relates to the malice concerned, when he was his ſervant.

RE-

RELEASE.

Releaſe, is the giving or diſcharging of the right or action which any hath or claimeth againſt another, or his Land, *Laxare* is properly to put Priſoners in fetters at liberty, and *relaxare* is to do this often, and *metaphoricè relaxare* is to put at liberty fettered eſtates and intereſts, and to make them abſolute. *Cooks* 10 *Rep. Hampets caſe.*

RELIEF.

Relief, as in antient time the Senatours of *Rome* were elected *à cenſu* of their Revenues, ſo here in antient time, in conferring of Nobility reſpect was had to their Revenues, by which their Dignity and Nobility may be ſupported and maintained, and ſo a Knight ought to have 20 li. *per annum*, a Baron 13 Knights Fees, and a quarter, an Earls 20 Knights Fees, and alwaies the fourth part of ſuch Revenue which is requiſite, by the Law to the Dignity ſhall be payed to the King for Relief, as the relief of a Knight is 5 ll. which is the 4th part of 20 ll. the revenue of a Knight, and the relief of a Baron is at 100 Marks which is the 4th part of his revenue, *viz.* 400 Marks, and includeth 13 Knights fees; and a quarter; and the relief of an Earl is a 100 ll. which is the 4th part of 400 of ll. his revenue: the Relief of a Marqueſs 200 Marks, his revenue being 800 Marks: the relief of a Duke ſhall amount

Relevium *is derived from the Latin word* relevari, quia hæreditas quæ jacens fuit per ante ceſſoris deceſſum relevatur in manus hæredum. *Cook on Lit. & Minſhew in Domeſday it is called* relevamentum & relevatio. *Cooks 7th Rep. Nevils caſe, and on Lit.* Relevium, ut Horomannus deſcribit, eſt honorarium, quod novus vaſſallus patrono largitur introitus cauſſa, nomen ex eo, quia morte vaſſalli, ut vaſſallus cecidit, ſiccum eo cecidit feudum, & propterea denuo oporteat relevari, hoc eſt, attolli. Itaque non relevium modo ſed & relevatio vocatur. Voſſius De vitiis Sermonis *lib.* 3. *cap.* 42.

to

to 200 ll. and by consequent his revenue ought to be 800 ll. *per annum*; for every one of the Nobility is presumed in the Law to have sufficient Frank-tenement *ad sustinendum nomen & onus.*

REMAINDER.

Cook on Lit. l.1.c.7. sect.60. & l.4.c.12. sect.215.

Remainder, is a remnant of the estate of the Grantor, or a residue of an estate in Lands depending upon a particular estate, and created together with the same; and in Law Latin it is called *remanere.*

Cooks first Rep. Hugh Cholmleys case.

There is a diversity between a Remainder limited by particular name, and by a generall name. For a Remainder limited by generall name may be good, although the person be not in *esse* at the time of the remainder limited; as if a Lease for life be made the Remainder to the right Heirs of *J.* and *S.* which is alive, this Remainder may be good, and yet he hath no Heir at the time of the Remainder limited, the same Law is of a Remainder *primo genito filio*, but a Remainder limited in particular, by name of Baptism and sirname is not good if the person be not *in esse.*

Cook on Lit. l.3.c.13. sect.721.

If the person that is to take the Remainder be not *in rerum natura*, as if a Lease for life be made the Remainder to the right Heirs of *J. S.* *J.S.* being then alive, it sufficeth that the Inheritance passeth presently out of the Lessor, but cannot rest in the Heir of *J.a St.* For that living his Father he is not *in rerum natura*, for *non est hæres viventis*: so as the Remainder is good upon the contingent, *viz.* if *J. S.* die during the life of the Lessee.

Remainder is a residue of the estate at the same time appointed over: *Reversion* is a residue of

of the eſtate not at the ſame time appointed over; reverſion is *ad Dominum aut ejus hæredes unde jus primo derivatur Remainder ad tertium aliquem qui neque Dominus neque tenens in præſente eſt.*

REMITTES.

Remitter, a French word, it ſignifieth to reſtore, and importeth a reſtitution of Poſſeſſion unto a man antient right. It is derived of the Latin verb *reomittere*, which hath two ſignifications, either to reſtore, and ſet up again, or to ceaſe. *Doderidge. Cook on Lit. l.3.c.12.*

RENTS.

Rents, Rent paid yearly for Land, or other things, is call'd in Latin *Reditus a reddendo*, becauſe it is yearly yeelded or reſtored for the Lands, rather *à redeundo quia retrò it:* becauſe it doth return to the Leſſor or Donor, for the iſſues and profits of the Land, and in Engliſh it is called a Rent, the French word *rentor*, to rate or aſſeſs a price. Tenure by Rents is called *vivi reditus*, becauſe the Lords and the owners thereof do live by them. *Cooks Rep. l. 10. & on Lit. l.2.c. 12. Doderidge. Cook on Lit.*

A feme ſole Leſſee for life rendring Rent, takes a Husband, the Rent arere, the Wife dieth though here be no recovery in the Wives life time, yet becauſe the Baron took the profit, he is ſtill chargeable in a Writ of debt for the Rent, for *qui ſentit commodum ſentire debet & onus.* *Wom. Law.*

For Rent payable at a day, the party hath all the day till night to pay it, but if it be a great ſumme as five hundred, or a 1000 li. He muſt be ready as long before the Sun-ſet, as the money may be told: for the other is not bound to tell it in the night. *Cooks 5th Rep. Wades caſe.*

REPLEVIN.

Replevin, is derived of *replegiare*, to redeliver to the owner upon pledges or ſurety: It had its originall of the word pledges, which denoteth them that undertake for the party, that he ſhall abide to be juſtified by the Law.

Cook on Lit. l. 2. c. 12. Lambert.

Goods may be replevied two manner of waies, viz. by Writ, and that is by the Common Law, or by the pleinte, and that is by the Statutes for the more ſpeedy having a gain of their Cattell, and Goods. *Replegiare* is compounded of *re* and *plegiare*, that is to redeliver upon pledge or Sureties.

Cook on Lit. l. 2. c. 12. ſect. 219.

Replegiare eſt repoſſeere bona mobilia dato apud præfectum vade ſive fide juſſore. Sane & Anglis breve, replegium dicitur ſunt verò *replegium* & *replegiare* à *plegius*, vel *plegium*. Plegius vas, ſive fidei juſſor. Voſſius De Vitiis Sermonis. *l.* 2. *c.* 25.

RESCEIT.

Reſceit, is in the Civil Law called *Admiſſio tertiæ perſone pro intereſſe*, in our Law when one is ſued whoſe eſtate is ſo weak that he cannot defend full Suit, then is another who is better able admitted up payer; ſometimes Receit is ſur Receit, this is againſt rule) as, A Wife being Tenant for life is received upon the default of her Husband, and after makes default he in reverſion ſhall be received; ſo if baron and feme be received, and after baron make default the feme ſhall be received.

2 *p. of Inſtit. fol.* 345

RESCOUS.

RESCOUS.

Reſcous. It is an antient French word, coming from *reſcourrer*, that is, *recuperare* to take from, to reſcue, or recover Reſcous is a taking away, and ſetting at liberty againſt Law, a diſtreſs taken, or a Parſon arreſted by the proceſs or courſe of the Law. There is a Reſcous indeed, and a Reſcous in Law: of the firſt hath been ſpoken. A Reſcous in Law is when a man hath taken in diſtreſs, and the Cattell diſtreined, as he is driving of them to the Pound, to go into the houſe of the owner, if he that took the diſtreſs demand them of the owner, and he deliver them not, this is a Reſcous in Law. *Cook on Lit. l.2.c.12. ſect.237.*

RESERVATION.

Reſervation, cometh of the Latin *reſervo*, that is to provide for ſtore. As when a man departeth with his land, he reſerveth or provideth for himſelf a Rent for his own lively-hood. And ſometime it hath the force of ſaving or excepting; ſo as ſometime it ſerveth to reſerve a new thing, *viz.* a rent, and ſometime to except part of the thing *in eſſe*, that is granted.

RETRAXIT.

Retraxit, is ſo called, becauſe that word is the effectuall word in the entry. The difference between a non-ſuit and a retraxit, is ever when the Demandant or Plaintiff is preſent in Court. A non-ſuit is ever upon a demand made, when the Demandant, or Plaintiff ſhould appear, and he makes default. A retraxit is a barre of all other actions, of like or inferiour nature. *Qui ſemel actionem renunciavit amplius repetere non poteſt.* But regularly non-ſuit is not ſo, but that he may commence an action of like nature again. For it may be that he hath miſtaken ſomewhat in that action, *Cook on Lit. l.2.c.11. ſect.288.*

on; or was not provided of his proofs, or miſtook the day, or like.

REVERSION.

Reverſion, it hath a double acception in our Law, the one is, *jus revertendi cum ſtatus poſſeſſionis defecerit*: and this is but an intereſt in the Land when the occupation and poſſeſſion of it ſhall fall, and ſo it is commonly taken. 2. When the poſſeſſion and eſtate which was parted for a time ceaſeth, and is determined in the perſons of the aliens, aſſignees, grantees, or their Heirs, and ſhall effectually return to the Donor, his heirs or aſſignees whence it was derived. This is the moſt apt and proper ſignification of the word, which is *nomen verbale*, and derived of the verb *revertor*, *& aptè dici non poteſt reverſio, antequam revertatur in ſallo.*

It cometh of the Latin word revertor, *and ſignifieth a returning again, therefore* reverſio terræ eſt tanquam terra revertens in poſſeſſione donatori ſive hæredibus ſuis poſt donum finitum. *Cook on Lit.*

A reverſion is where the reſidue of the eſtate alwaies doth continue in him that made the particular eſtate, or where the particular eſtate is derived out of his eſtate. *Cook* on *Lit. l.* 1. *c.* 2. *ſect.* 19.

RIGHT.

Right. Jus or right in generall ſignification includeth not only a right for the which a writ of Right doth lie, but alſo any title or claim either by force of a condition, *Mortmain* or the like, for the which no Action is given by Law, but only an entry.

Cook on Lit. l. 2. *c.* 8. *ſect* 445.

There is *Jus proprietatis* a right of ownerſhip: *Jus poſſeſſionis*, a right of ſeiſin or poſſeſſion: and *Jus proprietatis & poſſeſſionis*, a right both of property

perty and poſſeſſion; and this is antiently called *Jus duplicatum*. For example, if a man be diſſeiſed of an Acre of Land, the Diſſeiſee hath *Jus proprietatis*, the Diſſeiſor hath *Jus poſſeſſionis*, and if the Diſſeiſee releaſe to the Diſſeiſor, he hath *Jus proprietatis, & poſſeſſionis dormit aliquando Jus, moritur nunquam*: for of ſuch an high eſtimation is right in the eye of the Law, as the Law preſerveth it from death and deſtruction, troden down it may be, but never troden out. *Id. ib. ſect. 447.* *Id. ib. ſect. 478.*

Jus ſive Rectum, ſignifieth properly and ſpecially in Writs and in Pleas when an Eſtate is turned to a right, as by a diſcontinuance, diſſeſin, where it ſhall be ſaid, *quod Jus deſcendit & non terra*. But Right (alſo) doth include the Eſtate *in eſſe* in conveyances; and therefore if the Tenant in Fee-ſimple make a Leaſe for years, and releaſe all his right in the Land to the Leſſee and his Heirs, the whole eſtate in Fee-ſimple paſſeth. *Id. ib. c. 11. ſect. 650.*

Jus eſt ſextuplex: 1. *Jus recuperandi*: 2. *Intandi*: 3. *Habendi*: 4. *Retinendi*: 5. *Percipiendi*: 6. *Poſſidendi*. *Cook l. 8. Rep. Edw. Althams caſe.*

RIOT.

Riot, is where three (at the leaſt) or more do ſome unlawfull Act, it comes from the French word *riottor*, id eſt, *rixari*, ſcold or brawle. *Cook on Lit. l. 3. ſect. 50.*

ROBBERY.

Robbery, is ſo called, becauſe Goods are taken as it were *de la robe*, from the robe, that is from the perſon. It is when a man taketh any thing from the perſon, or out of the poſſeſſion of another feloniouſly. *Either becauſe they bereaved the true man of ſome of his robes or garments, or becauſe his money or goods were taken out of ſome part of his garment, or robe about his perſon. Sir Edward Cook's 3d part of Inſtit. Ch. 16.*

A Robbery

A Robbery was done in *January* after the Sunsetting, during twilight, and it was adjudged that the Hundred should answer for it, because it was convenient time for men to travell, or be about their works or businesses, and with this accords the Book in 3. *Edw.* 3. *tit coronne* 293. that if one kill another at the hour of the Evening and escape, by the Common Law the Town shall be amerced, for this is counted in the Law part of the day.

Cook 7th Rep. Ashpooles case.

A man in time of Divine service upon the Sabbath Day was rob'd, *Mountague* Chief Justice was of opinion that the Hundred should not be charg'd, but *Doderidge*, Sir *John Crook*, and *Hawtain* Justices, were of contrary opinion, that the Hundred should be charged, and so it was adjudged *termino Michaelis*.

Although the thing so taken be not to the value but of a penny, yet it is felony for which the offender shall suffer death, and shall not have the benefit of his Clergy, not so much for the value of the goods taken, as for terrifying the party robbed, a putting him in dread and fear of his life.

Stamford Dr. & Stu.

He that robbeth any dwelling house, or outhouse belonging to it in the day time, of the value of 5 s. whether it be money, goods or cattels shall not have his Clergy.

39 Eliz. 15. c.

If a Bailiff of a Mannor, or a receiver, or a Factor of a Merchant, or the like accountant be robbed, he shall be discharged thereof upon his account. But otherwise if is of a Carrier, for he hath his Hire, and thereby implicitely undertaketh the safe delivery of the goods delivered to him, and therefore he shall answer the value of them if he be robbed of them. So if goods be delivered to a man to be safely kept, and after those

Cook 4th Rep. Southcots case. 83. B. & on Lit. l. 2. c. 5. sect. 123.

goods

goods are ſtollen from him, this ſhall not excuſe him, becauſe by the acceptance he undertook to keep them ſafely, and therefore he muſt keep them at his perill. So it is if goods be delivered to one to be kept; for to be kept and to be ſafely kept is all one in Law: but if goods be delivered to him to be kept as he would keep his own, there if they be ſtollen from him without his default or negligence, he ſhall be diſcharged. *Id. ib.* So if goods be delivered to one as a gage or pledge, and they be ſtollen he ſhall be diſcharged, becauſe he hath a property in them, and therefore he ought to keep them no otherwiſe then his own: but if he that gaged them tendred the money before the ſtealing, and the other refuſed to deliver them, then for this default in him he ſhall be charged. If *A.* leave a Cheſt locked with *B.* to be kept, and taketh away the Key with him, and acquainteth not *B.* what is in the Cheſt, and the Cheſt together with the goods of *B.* are ſtollen away, *B.* ſhall not be charged therewith, becauſe *A.* did not truſt *B.* with them as this caſe is.

ROGUE.

Rogue. This word is but a late gueſt in our Law, for the Elder Statutes call ſuch a one a vagant ſtrong or ſturdy Begger and Vagibond, and it ſeemeth to be fetched from the Latin *Rogator*, an aſker or Beggar, or the French, *Rogue id eſt arrogans.*

ROUT.

Rout, is ſo called, becauſe they do move and proceed in routs and numbers. The difference betwixt an unlawfull aſſembly, a rout and riot, is this, when three or more do meet to do an unlawfull act, this is an unlawfull Aſſembly, when they *From the French word* route *id eſt*, turma.

they move being weaponed from the place of their meeting, towards the place where they purpose to do an unlawfull act, (though they do it not) this is a Rout. When with unlawfull weapons, they do an unlawfull act, this is a Riot. An unlawfull Assembly may well be called an Introduction, a Rout, a Persecution, and a Riot, an Execution.

S.

SEISIN.

Cook on Lit. l.2.c.12. sect.233.

SEisin or *Seison*, is common as well to the English as French, and signifieth in the common possession, whereof *Seisina* a Latin word is made, and *Seisire* a verb.

SEISINA.

Cooks 6th Rep. Bredimans case.

Seisina is derived of *à sedendo*, for untill he have seisin, all is labour and grief, but when he hath seisin, he may *sedere & acquiescere*.

SERGEANTS.

Sergeants are so called *à serviendo, & à servando*, or *conservando*, for they are conservators of the Law and Justice, and may be stiled as well *Servantes leges*, as *servientes ad legem*.

SHERIFF.

Cook on Lit. l.3.c.1. sect.248.

Sheriff or *Shireve*, is derived of two Saxon words, *viz. Shire comitatus*, which cometh of the Saxon verb, *Shiram id est partivi*, because the whole Realm is parted, and divided into Shires and

and *Reve præfectus*, or *præpositus*, so as Sheriff is *vicecomes provinciæ*, or *Comitatus*, Keeper of the Shire or County, the words of his Patent be *commisimus vobis custodiam comitatus nostri*. And he hath *triplicem custodiam*, a three-fold custody, *viz.*

1. *Vitæ Justitiæ*, for no suit begins, and no process is served but by the Sheriff.

2. *Vitæ Legis*, he is after long Suits, and chargeable to make execution, which is the life and fruit of the Law.

3. *Vitæ Reipublicæ*, he is *Principalis conservator pacis*, within the County, which is the life of the Common-wealth. He is called in Lain *vice comes*, id est, *vice comitis*, that is instead of the Earl of the County, who in antient time had the Regiment of the County under the King, Sheriffs were great Officers, and Ministers of Justice long before the Conquest, and Justices of Peace had not their being untill almost 300 years after, *viz.* in the first year of *Edward* the 3d. *Vita reipublicæ pax.* Vicem gerens seu vicarius comitis. *Cook preface to 3d Rep.*

When the King makes a Sheriff, *durante beneplacito*, although he may determine his Office at his pleasure, yet he cannot determine this in part, nor abridge the Sheriff of any thing incident or appurtenant to his Office, for the Office is intire, and it ought to continue so without any fraction or diminution, unless it be by Act of Parliament. *Cook 4th Rep. Mittons case.*

SOCAGE.

Socage, the legall termination of (*agium*) in composition signifieth service or duty, as *homagium* the service of the man, *escuagium servitium scuti socagium servitium soca hidagium*: the duty to be paid for a hide or plough-land, and so of *carnagium, burgagium, villenagium.* *Cook en Lit. l. 2 c. 5. sect. 117.*

When the Lord infeoffes another of arable land to hold of him in Socage, that is, *per ſervitium ſocæ*, as every ſuch tenure at the beginning was, as *Littleton* ſaith: the Feoffee *ad manutenendum ſervitium ſocæ*, ſhall have common in the waſtes of the Lord for his neceſſary beaſts which dung his Land.

Cook. 4th Rep. Cirringhams caſe.

1. Becauſe it was tacitely implyed in the feoffment, for the feoffee cannot dung his land without beaſts, and they cannot be ſuſtained without paſture, and *per conſequens* the Feoffee ſhall have (as a thing neceſſary and incident) Common in the waſtes and lands of the Lord.

2. For the maintenance and advancement of tillage which is much regarded and favoured in the Law.

SERJEANTY.

Cook on Lit. l 2. c. 8. ſ. 153.

Serjeanty, cometh of the French word Sergeant, that is *Satelles*, and it is the ſame with ſervice. It is called *Magna ſerjeantia*, or *magnum ſervitium*; great ſervice as well in reſpect of the excellency and greatneſs of the perſon to whom it is to be done (for it is to be done to the King only) as of the honour of the ſervice it ſelf: and *Littleton* ſaith, it is greater and more worthy then Knights ſervice.

This Tenure hath 7 ſpeciall Properties.

1. To be holden of the King only.

2. It muſt be done when the Tenant is able in proper perſon.

3. This ſervice is certain and particular.

4. The Relief due in reſpect of this tenure differeth from Knights ſervice.

5. It is to be done within the Realm.

6. It is Subject to neither aid *pour faire fitz chivalier*, or *file marrier*.

7. It

7. It payeth no escuage.

STATUTE.

Statute, cometh of the Latin word *statutum*, which is taken for an Act of Parliament made by the King, the Lords, and Commons. *Cook on Lit. l. 2. c. 11. sect. 193.*

STATUTES.

Statutes. Anno 3tio. Caroli Regis. C. 1. No Carrier with any Horse or Horses Waggon, men with waggons, Waynemen with Waynes, nor Drovers with Cattell shall travell upon the Lords Day, twenty Shillings forfeit for every offence, every Butcher that kills or sells Victuals on that day, shall forfeit for every offence 6 s. 8 d. The offences being done in view of any Justice of Peace, Mayor, *&c.* or proved upon Oath by two Witnesses, or by confession of the offendor.

All such forfeits shall be leavied by any Constable, or Church-Warden, by warrant from any Justice, Mayor, and by distress, sale of goods, or recovered by any person that will sue for the same by Bill, Plaint, or information in any of the Kings Courts of Record in any City or Town corporate, to the use of the poor of the Parish, saving that the Justice, Mayor, may reward the Informer according to their discretions: So that such reward exceed not the third part of the forfeitures, to continue to the end of the first Session of the next Parliament.

Anno 1. Caroli Regis, C. 1.

No meetings of people out of their own Parishes on the Lords-day within this Realm, or the Dominions thereof, for any pastime whatsoever. Nor any Bear-baitings, Bull-baitings, Common Playes, or other unlawfull exercises used by any within their own Parishes, every person offending, to forfeit for every offence 3 s. 4 d. to

the poor of the Pariſh. One Juſtice of Peace of the County, or the chief Officer or Officers of any City or Borough, upon view or confeſſion of the parties, or proof of one or more Witneſſes on Oath, ſhall give warrant under hand, and ſeal to the Conſtables or Church-wardens of the Pariſh, to leavy the ſaid penalty by diſtreſs and ſale. And in default of diſtreſs, the offender to be ſet in the ſtocks three hours.

None ſhall be impeached by this Act, unleſs he be queſtioned within the moneth, to continue till the firſt ſeſſion of the next Parliament.

Tertio Caroli capite 4to continued untill firſt ſeſſion of the next Parliament.

Anno 21 Jac. Regis. An Act to prevent and reform prophane ſwearing and curſing.

None ſhall hereafter ſwear or curſe, if any offend herein in the hearing of any Juſtice of Peace of the County, or of any Major, Juſtice of Peace, Bailiff, or Head-Officer of any City or Town Corporate, or ſhall be thereof convicted by the Oathes of two Witneſſes, or confeſſion of the party. They ſhall forfeit to the poor of the Pariſh for every time they ſo offend 12. d. And the Conſtable, Church-Warden, and Overſeers of the poor of that Pariſh, by Warrant from ſuch Juſtice or Head-Officer, ſhall leavy the ſame by diſtreſs and ſale of the offenders goods, rendring the overplus. And in defect of diſtreſs, if he or ſhe be above twelve years, ſhall by Warrant from ſuch Juſtice of Peace, or Head-Officer be ſet in the Stocks three whole hours. And if the offendor be under 12 years of age, and do not forthwith pay the forfeit, then he or ſhe by Warrant of ſuch Juſtice, or Head-Officer, ſhall be whipped by the Conſtable, or by the Parent, or maſter in his preſence. This Statute ſhall be read by the

the Minister of every Parish twice in the year, upon the Sunday after Evening Prayer.

The forfeiture for not repairing to the Church weekly is 12 d.

10. *Jacobi.* Who be adjudged Rogues by the Stat. of 39 *Eliz.* 4.

All persons calling themselves Scholars, going about begging, all Sea-faring-men pretending loss of their Ships or goods on the Sea, going about the Country begging, all idle persons, Fortune-tellers, all Fencers, Bear-wards, common Players of Enterludes, and Minstrels wandring abroad.

STEALING.

Stealing. Theft is the fraudulent taking away of another mans goods, with an intent to steal them against (or without) the will of him, whose goods they be.

The Civil Laws do judg open theft to be satisfied by the recompence of four-fold, and privy theft, by the recompence double, but the Laws of *England* suffer neither of those offences, to be more favourably punished, then with the offendors death, so that the value of the thing stollen be above 12 d. *Fortescue de laudibus legum Angliæ.*

He that stealeth the Eggs of Swans out of their Nests, shall be imprisoned for a year and a day, and fined according to the Kings pleasure, one moity to the King, and the other to the owner of the Land where the Eggs were so taken, and it was a Custom in antient time, that he which stole a Swanne in an open and common River lawfully marked, the same Swanne (if it may be) or another Swanne shall be hanged in a House by the beak, and he which stole him in recompence thereof compelled to give the owner *Coolys 7th Rep. Cases of Swans.*

as much Corn as may cover all the Swan, by putting and turning the Corn upon the head of the Swanne, untill the head of the Swanne be covered with the Corn.

STEWARD.

Steward. This word is derived of two old words, *Stede* and *ward*, and it is as much to say, as a man appointed in my steed or place. And *Seneschallus* in Latin hath the signification: the Under-sheriff *Subvicomes*, in antient times was called *Seneschallus vicecomitis*, because he exerciseth the place of the Sheriff himself, and therefore a great Officer of this Realm is called the great Steward, because the King appoints him in divers cases to exercise his place. By the Law, without speciall words, a Steward cannot make a Deputy, because his Office requires sciency, fidelity, and discretion.

Cook 9 Rep. The Countess of Salops case, Seneschall *is derived of* sein, *a house or place, and* schal *an Officer or Governour; some say that* sen *is an antient word for Justice, so as* Seneschall *should signifie* Officiarius Justitiæ *Cook on Lit. l.1.c.9. sect.78.*

Security of peace, Securitas de pace. Surety of the word *Securitas*, because the party that was in fear, is thereby secure and quiet. *Lambert.*

It is an acknowledgment of a Bond to the King, taken by a compent Judge of Record, for the keeping of the peace, *Securitas de bono gestu suo, Surety of the good abearing*, differs from surety of the peace in this, that whereas the peace is not broken without an affray, or battery, or such like; this surety, *De bono gestu*, may be broken by the number of a mans company, or by his or their weapons, or harness.

Surrender, quia sursum redditio, and it is of two

two French words, *Suise & vendre*, a yeelding up of an eſtate again to his Leſſee, or his aſſignee.

SUSPENCE.

Suſpence, cometh of *ſuſpendeo*; and in legall underſtanding is taken when a Seignory, Rent, profit, apprender, by reaſon of unity of poſſeſſion of the Seignory, Rent, &c. and of the Land out of which they iſſue, are not *in eſſe*, for a time, *& tunc dormiunt*, but may be revived, or awaked. And they are ſaid to be extinguiſhed, when they are gone for ever. *Et tunc moriuntur*, and can never be revived, that is, when one man hath as high, and perdurable an eſtate as another. *Cook on Lit. l.3.c.10. ſect.559.*

SUIT.

Suit. A Wife is diſabled to ſue without her Husband, as much as a Monk is without his Sovereign. But by the Common Law the Wife of the King of *England* is an exempt perſon from the King, and is capable of Lands or Tenements of the gift of the King, as no other Feme covert is, and may ſue, and be ſued without the King, as a Feme ſole by the Common Law, but where the Husband is baniſhed, the Wife may ſue, and be ſued. *Cook on Lit. l.2.c 11. ſect.200. Cook ib.fol. 132,133.*

T.

T.

TAILE.

Cook Rep. l.7. Nevils caſe, fol.33. B.

Taile. An eſtate Tail, it cometh of the French word *Tailler*, to cut, *Lit. l.* 1. At the Common Law, before the Statute, *De donis conditionalibus*, the Donor and Donee had poſſibility, the Donor of reverter, if the Donee dyed without iſſue male, and the Donee to have power to alien, if he had iſſue male. *poteſtatem alienandi poſt prolem ſuſcitatam.* Then he had full and abſolute fee-ſimple to three purpoſes:

1. To alien.
2. To forfeit by attainder of Felony.
3. To charge with rent common, *&c.* a woman being Tenant in ſpecial tail to her, and her firſt Husband, after iſſue had by her firſt, ſhe had full fee-ſimple to make the ſame Land deſcend to any of her iſſues by any other Husband.

Cook Rep. l.8. Paines caſe. p.35. B.

Cook 7 Rep. Nevils caſe p.33,34,35

An annuity at this day is not within the Statute *De donis conditionalibus*, becauſe it is *nec terre, nec tenement*, nor exerciſable within Land Tenement, nor concerning land, but onely a meer perſonall hereditament.

Cook 7 Rep. Bereſfords caſe.

To eſtate tail, it is requiſite, that the Heirs be limited to be procreate of ſome body in certain, either by expreſs words, or by words equivalent; for the preciſe words, *De corpore*, are not alwaies neceſſary to the creation of an eſtate tail.

Perkins tit. Faits, ſ.35.

If Land be given by Deed to *J.S. Et ſi contingat ipſum abire ſine hærede de corpore ſuo, quod tunc*

tunc revertatur, to the Donor and his Heirs, and livery of ſeiſin is made according to the Deed; in this caſe the Donee hath eſtate, notwithſtanding it be not given to him, and his heirs. For the Statute of *Weſtminſter* the ſecond, c. 1. will *quod voluntas donatoris ſecundum formam in charta doni ſui manifeſtè expreſſam, de cætero obſervetur*.

If Land be given to a man, and to his heirs males, and he hath iſſue male, he hath fee-ſimple, but when Lands be given to a man, and to his Heirs males of his body begotten, then he hath fee-tail. *Littleton Cook Rep. l.8. Princes caſe, f.22.* A

A deviſe made to one and his Heirs males, makes an eſtate tail, it being ſuppoſed that the Teſtator was *inops concilii*, in making his Will, and therefore his intent ſhall be taken.

The King conveyes Land to a man and his heirs males, his eſtate is void becauſe the King is deceived. *Cook Lovels caſe.*

If Lands be given to a man, and to his heirs which he ſhall beget of his Wife, or to a man, *Et hæredibus de carne ſua*, or to a man, *Et hæredibus de ſe*, this is an eſtate tail. *Cook on Lit. l.1.c.2. ſect.15.*

This word may in many caſes be omitted, or expreſſed by the like, and yet the ſtate in tail is good, as *Hæredibus de carne, hæredibus de ſe hæredibus quos ſibi contigerit*, &c. if the word be *procreandis*, or *quos procreaverit*, the eſtate in tail is good; and as *procreatis* ſhall extend to the iſſues begotten before, ſo *procreandis* ſhall extend to the iſſues begotten afterwards. *Id. ib.*

If Lands be given to a man and a woman unmarried, and the heris of their two bodies, for the apparent poſſibility to marry, they have an eſtate tail in them preſently. *Id. ſect.16.*

TAIL.

Cook on Lit. l.3.c.3. sect.32. and 11. Rep. Lewis Bowles case.

Tail after possibility. To hold in the tail after possibility of issue extinct, is where land is given to a man, and to his Wife, and to the heirs of their two bodies engendred, and one of them overliveth the other without issue between them begotten, he shall hold the Land for term of his own life, as Tenant in tail after possibility of issue extinct.

This Tenant hath seven qualities and priviledges which Tenant in tail himself hath, and which Lessee for life hath not. As

1. He is not punishable for wast.
2. He shall not be compelled to attorn.
3. He shall not have aid of him in the reversion.
4. Upon his alienation, no Writ of entry *in consimili casu* lieth.
5. After his death, no Writ of Intrusion doth lie.
6. In a *præcipe* brought by him, he shall not name himself Tenant for life.
7. In a *præcipe* brought against him, he shall not be named barely Tenant for life.

And yet he hath other qualities which are not agreeable to an estate in tail, but to a bare Lessee for life.

1. If he make a feoffment in fee, this is a forfeiture of his estate.

2. If an estate in fee, or in fee tail, in reversion or remainder descend, or come to this Tenant, his estate is drowned, and the fee, or fee-tail executed.

3. He in the Reversion or remainder shall be received upon his default, as well as bare Tenant for life.

4. An

4. An exchange between a bare Tenant for life and him is good, for their eſtates in reſpect of the quantity are equall, ſo as the difference ſtandeth in the quality and not in the quantity of the eſtate, And as the eſtate tail was originally carved out of a Fee-ſimple, ſo is the eſtate of his Tenant out of an eſtate in ſpeciall tail; and he is called Tenant in tail after poſſibility of iſſue extinct, becauſe by no poſſibility he can have any iſſue inheritable to the ſame eſtate tail. But if a man giveth Land to a man and his Wife, and to the heirs of their two bodies, and they live till each of them be an hundred years old, and have no iſſue, yet do they continue Tenants in tail, for the Law ſeeth no impoſſibility of having children. *Id. on Lit. ib.*

TALLAGE.

Tallage. Tallagium, or *Talagium* cometh of the French word *Tailer*, to ſhare or cut out a part, and metaphorically is taken when the King or any other hath a ſhare or part of the value of a mans goods or Chattels, or a ſhare or part of the annual revenue of his Lands, or puts any charge or burden upon another.

It is a generall word, and doth include all Subſidies, Taxes, Tenths, Fifteens, Impoſitions or other charge put or ſet upon any man. *Cook's 2d part of Inſtit.*

TENEMENT.

Tenement, is the ſame with us that *prædium urbanum* is with the Civilians, it includeth not only all corporate Inheritances, which are or may be holden, but alſo all Inheritance iſſuing out of any of thoſe Inheritances, or concerning or annexed to, or exerciſable within the ſame, though they lie *Cook on Lit. l.1.c.2 ſect. 14.*

lie not in tenure, therefore all theſe without queſtion may be intailed, as Rents, Eſtoures, Commons, or other profits whatſoever granted out of the Land.

TENURE.

See afore tit.

Tenure, there is a Tenure in *England*, where the Tenant maketh proffer of a Preſent to the Landlord, but delivereth it not, that the chief Lord may ſay unto him, I thank you for nothing.

TESTAMENT.

Teſtament, The making of a Teſtament hath three parts.

1. Inception, which is the writing of the Teſtament.
2. Progreſſion, which is the publication of it.
3. And conſummation, which is the death of the party.

Teſtamentum eſt duplex.

Cook on Lit. l.2.c.10. ſect.167. Voluntas teſtatoris ambulatoria uſque ad mortem, teſtamentum morte conſummatum eſt.

1. *In ſcriptis*, written, which at the time of making, is put in writing.
2. *Nuncupativum, ſeu ſine ſcriptis*, when the Teſtator doth by word only declare his will before witneſſes. And in ſome Cities, or Boroughs, Lands may paſs, as Chattels by will, nuncupative or paroll, without writing, but in Law moſt commonly *ultima voluntas in ſcriptis* is uſed where Lands or Tenements are deviſed, and *Teſtamentum*, where it concerneth chattels.

Ultima voluntas, *a laſt Will is the diſpoſition or beſtowing of a mans own goods and lands taking effect after his death.*

Teſtamentum is *teſtatio mentis*, and is favourably to

to be expounded, according to the meaning of the Teſtator.

The firſt Grant and the laſt Will is of greateſt force. *Cook on Littleton ibidem, ſect.* 168.

A Teſtament is defined *voluntatis noſtræ juſta ſententia de eo quod quis poſt mortem ſuam fieri velit, cum executoris inſtitutione*, a declaration of our mind concerning that which we would have done after our deaths, with the ordaining of an executor thereof. *Weſts Preſidents.*

Every Teſtament is a laſt Will, but every laſt Will is not a Teſtament, a Teſtament is one kind of laſt Will, wherein the Executor is named, who is called *hæres* in the Civil Law.

Teſtaments ought to be proved before the Ordinary, unleſs it be in ſpecial Caſes, where the Lords have probate of the Teſtaments of their Tenants, before the Stewards, or themſelves in their temporall Courts. *Perkins tit. of teſtam.*

A Teſtament proved before the Biſhop himſelf of the ſame Dioceſs where the party dies is good, if he have not goods and chattels to the value of fourty Shillings in any other Dioceſs, for then it ought to be proved in the Prerogative Court, where one hath Goods only in an inferiour Dioceſs, but the Metropolitane of the ſame Province pretending that he had *bona notabilia* in divers Dioceſſes, commits adminiſtration, this adminiſtration is not void, but voidable by ſentence, becauſe the Metropolitane hath jurisdiction over all Dioceſſes within his Province, but if an Ordinary of a Dioceſs commit adminiſtration of goods, when the party hath *bona notabilia* in divers Dioceſſes, ſuch adminiſtration is meerly void, as well for the goods within his own Dioceſs, as elſe-where, becauſe that by no means he may have jurisdiction of the cauſe. What is meant by *Perk. ib. Cook 5 Rep. Veres caſe in the latter end of Princes.*

notable

noble goods, divers Authours have been of divers opinions. Some have been of this opinion, that if the Teſtator die poſſeſſed of goods or chattels to the value of forty Shillings in two ſeverall Dioceſſes, then he ought to be deemed to have notable goods, others have been of this mind, that the teſtator is deemed to have notable goods, though at the time of his death he had but one penny in another Dioceſs. Others are of this judgment, that he is ſaid to have notable goods, which hath goods to the value of ten pounds of currant Money of *England*, diſperſed in divers Dioceſſes or jurisdictions, this opinion ſeemeth beſt to ſome.

Fitzh.abri. adminiſtrat.

Perk.tit. teſt.f.94.

When the Teſtator doth in the former part of his will deviſe his Lands in ſuch a place to one in Fee, and after in the latter part of the ſame will to another perſon in Fee, it ſeemeth by the Laws of the Realm, that the latter parg doth overthrow the former.

Plowd. in caſe inter Paramor & Yardley fol.541.

It is not ſufficient by the Law, that the Teſtator be of memory, when he maketh his will, to anſwer to familiar and uſefull queſtions, but he ought to have a diſpoſing memory, ſo that he be able to make a diſpoſition of his Lands with underſtanding and reaſon, which memory the Law calls a ſound and perfect memory.

Cook 6 Rep. Marqueſs of Wincheſters caſe.

If the Writer being skilfull in the Law, do only take notes from the mouth of the deceaſed, of his laſt will for the deviſe of Lands, tenements and hereditaments, and afterwards write the ſame, but before it be ſhewed to the Teſtator, he depart this life, yet this is ſufficient for a will in writing for the conveyance of Lands, tenements, and hereditaments, whereof ſuch notes were taken.

It is called *nuncupative à nuncupando, id eſt nomi-*

nominando, becauſe a man muſt name his Executor, and declare his own mind before witneſſes. It is of as great force and efficacy (except for Lands, Tenements, and Hereditaments) as a written Teſtament. This kind of Teſtament is commonly made when the teſtator is now very ſick, weak, and paſt all hope of recovery.

Lands holden in burgage and gavelkind are deviſable by will.

Theſe perſons following cannot make a teſtament, or diſpoſe of their goods and chattels.

1. Such as want diſcretion, as children, mad folks, and ideots.
2. Such as lack freedom and full liberty, as bondſlaves and villains, captives and women covert.
3. Such as lack ſome of their principal ſenſes, *viz.* ſuch as be dumb, deaf, and blind.
4. Such as have committed ſome hainous crimes, as traytors, felons, hereticks, apoſtates.

Wills or Teſtaments made of any Mannours, Lands, or Tenements, or other hereditaments, by any perſon within the age of twenty one years, are not good or effectual in Law, for untill that time by the Common Laws of this Realm they be accounted Infants, howbeit a boy after the age of fourteen years, and a wench after the age of twelve may make a Teſtament, and diſpoſe of their goods and chattels.

Stat. H. 8. anno 34 c. 5. Dr. and Student. l. 1 cap. 21. Perk. tit. de deviſe.

If mad perſons make their Teſtaments when they have clear or calm intermiſſions, it is good. See *Cooks 6 Rep.* in *Pawlets caſe*.

By the opinion of divers Juſtices of this Realm, and Doctors of the Canon and Civil Law, the goods of this Realm, that is, of the antient Crown and Jewels cannot be diſpoſed by will.

Fitz. abrid. exec. 198.

TILLAGE.

Tillage. Agriculture or tillage is of great account in Law, as very profitable for the Commonwealth, the Common Law giveth arable Land the preheminence and precedency before Meadows, Pastures, Woods, Mines, and all other ground whatsoever. By laying of Lands used in tillage to Pasture, six main inconveniences do daily increase.

Cook on Lit. l. 2. c. 5.

1. Idleness, which is the ground and beginning of all mischief.
2. Depopulation and decay of Towns, for where in some Towns two hundred persons were occupied and lived in their lawfull labours, by converting of tillage into Pasture, onely two or three Herdmen are maintained.
3. Husbandry is decayed.
4. Churches are destroyed, and the service of God neglected by diminution of Church Livings.
5. Injury and wrong done to Patrons and Gods Ministers.
6. The defence of the Land against forreign enemies, enfeebled and empaired, the bodies of Husbandmen being more strong and able, and patient of cold, heat, and hunger, then of any other.

TITLE.

Title, properly (as some say) is when a man hath a lawfull cause of entry into Lands whereof another is seized, for the which he can have no action, as title of condition, title of Mortmain. But legally this word (Title) includeth a right also, and title is the more generall word, for every right is a title, but every title is not such a right for which an action lieth, and therefore ti-

tulus

tulus est justa causa possidendi, quod nostrum est, and signifieth the means whereby a man cometh to Land, as his title is by fine, or by scoffment, *& dicitur titulus à tuendo,* because by it he holdeth, and defendeth his Land, and as by a release of a right a title is released, so by release of a title, a right is released also but title in a proper and strict significati n, is taken for a right of Entry, where a man can have no action, as to enter for condition broken, or alienation in Mortmain.

Cook 4 Rep. Edward Althams Case.

TOLT.

Tolt, It is so called because it doth *tollere loquelam* from the Court Baron to the County Court.

Cook 3 Rep. preface to the Reader Cook on Lit. l. 2. c. 10. sect. 171.

TOWN.

Town, If a Town be decayed, so as no houses remain, yet it is a Town in Law. It cannot be a Town in Law, unless it hath, or in times past had a Church, and celebration of Divine Service, Sacraments and Burials.

It appeareth by *Littleton*, that a Town is a *genus*, and a Borough is the-*species*, for he saith, that every Borough is a Town, but every Town is not a Borough. There be in *England* and *Wales*, eight thousand, eight hnn ed and three Towns, or thereabouts.

Villa quasi vehilla quòd in eam convehantur fructus vicus *because it is* prope viam.

TRESPASS.

Trespass. The Law adjudgeth every trespass to be done with force and arms, therefore the Plaintiff, that saith the Defendant took his horse with force and arms, (though he came without weapon) saith truly that he took him with force, as the Law meaneth force. *Dr. and Student cap.* 14.

Transgressio dicitur à transgrediendo, *because it passeth that which is right.*

If *vi & armis* be not in the Writ, it shall abate, *Fitz. nat. brev.*

Cook on Lit. p. 57.

The Law accounteth all to be *vis*, which is contrary to *Jus*. If I do but hawk or walk for my paſtime or recreation over another mans ground, he may have his action of treſpaſs againſt me, *quare vi & armis*, for though I meant no harm to him or his, yet I might not paſs upon his ground without Licence.

Fitz. Herb. N. Brev. tit. Treſp. The form of a Writ for living things, as Horſes, is *ceperunt & abduxerunt*, for a dead thing, *ceperunt & aſportaverunt*.

TRAVERSE.

Traverſe, It took the name of the French *de traverſe*, which is no other then *de traverſo* in Latin ſignifying, *on the other ſide*, becauſe as the indictment on the one ſide chargeth the party, ſo he on the other ſide cometh in to diſcharge himſelf.

Traverſing of an Endictment is to take iſſue upon the chief matter thereof, which is to make contradiction, or to deny the point of the indictment.

TREASON.

Treaſon, is derived from (*trahir*) which is treacherouſly to betray, *Trahiſon*, *per contraſtinem*; *Treaſon*, if a man be arraigned for high treaſon, and ſtands mute, or will not directly anſwer to the crime, judgment ſhall be given upon him as upon a traytor convict. *Fatetur facinus qui judicium fugit.*

L. Pyer.

If a ſervant hath an intent to kill his Maſter and before execution of his intent depart out of ſervice, and being out of ſervice, executeth his intent, and killeth him which was his Maſter: this is petty-treaſon, for the execution reſpects the original cauſe, which was malice conceived, when he was ſervant.

Cook. 1 Rep. Shelliescaſe

In Treason concealment is as capitall as the practice. Here are no accessaries, all are in a like predicament of offence and danger of Law, *in majori proditione omnes sunt principales.*

It is either *High*, or *Petty-Treason*: It is called *High* in respect of the King which is the highest person; *Petty* in regard of the inferiority of the persons against whom it is committed. *Voluntas non reputabitur pro facto nisi in causa proditionis.* To intend, or imagine the death of the King or Queen, though it be not effected, yet if this be declared by an open act, or uttered by words, or Letters, it is Treason.

Alta proditio, & proditio parva.

Proditorie must necessarily be used in every Indictment of Treason.

A man that is a traytor convicted and attainted, hath his Judgment to be drawn upon a Hurdle from his Prison to the place of Execution, as being unworthy to tread any more upon Mother Earth, and that backward, with his Head down-ward, for that he hath been retrograde to naturall courses; after hanged up by the neck between Heaven and Earth, as deemed unworthy of both; his Privy parts are cut off, as being unprofitably begotten, and unfit to leave any generation after him; his Bowels and Intrals burned, which inwardly had conceived and concealed such horrible Treason; then his Head cut off, that imagined the mischief.

Stamf. pl. of C. l. 3. c. 19. with Dr. Bays his gloss. The Romans call'd high treason læsam Majestatem.

Petty Treason is a killing of any to whom private obedience is due; as for a servant to kill his Master or Mistris, a Wife her Husband, a Child her Father or Mother; a Clerk his Ordinary, to whom he oweth Canonicall obedience.

Stamf. pl. of Cr. l. 1. c. 44

If a Servant procure another to kill his Master, and he kill him in his Servants presence, this is Petty Treason in the Servant, and murder in the other; but if it be in his absence, the Servant is

only acceſſary to the murder, becauſe the principall is not a Traytor, and the acceſſary ſhall not be in worſe condition then the principall.

L. Dyer. ter. Hil. an. 2. & 3 P. & M.

A maid conſpired with a ſtranger to rob her Miſtreſs, and in the night time let him in at the door, and led him to her Miſtreſs bed with a Candle, and the ſtranger kill'd her, the ſervant ſaying, or doing nothing, but holding the Candle, this was petty Treaſon in her.

TREASURE.

Cook on Lit.

Treaſure, the Kings Treaſure is the ſinews of War, and the Honour and ſafety of the King in time of Peace, *Firmamentum belli & ornamentum pacis.*

Brook abri. fol. 181.

If any Mine or Metall be found in any ground, that alway pertaineth to the Lord of the ſoil, except it be a Mine of Gold or Silver, which ſhall be alway to the King, in whoſe ground ſoever they be found.

Fitz. coron. 281. 436. Ployden.

Our Law ſaith, *Quod theſaurus competit Domino Regi, & non domino libertatis, ſi non ſit per verba ſpecialia, ut per præſcriptionem.*

It is called in the common Law treaſure trove, *that is, treaſure found.*

Oars of Gold and Silver belong to the King by his Prerogative, but not Treaſure found, for they are called *Theſauri in terra*, and not *de terra*. Treaſures hid in the Earth; as when any Money, Gold, Silver, Plate, bullion is found in any place, and no man knoweth in whom the property is, the Law beſtoweth it upon the King, and it becometh *res fiſcalis*, parcell of the Treaſure Royall.

TRIALL.

Lambert.

Triall. If the triall be of an alien born (for felony or murder committed by him) the Jury ſhall be *de medietate linguæ*, that is, half of one Nation, and half of Strangers, except it be in the caſe of a *Scot*, whoſe Jury ſhall be altogether *Engliſh*, be-

cau-

cauſe both he ſpeaks our language, and is reputed a Subject.

In *January* 38. *H.* 8. *Henry Howard*, Earl of *Surrey*, Son and Heir apparent to *Thomas*, Duke of *Norfolk*, was attainted of High Treaſon, for joyning the Armes of *England* to his own, and he was tryed by Knights and Gentlemen, and not *per Dominos nec per pares Regni*, becauſe he was not Earl by creation, but by nativity, as Heir apparent to the Duke, which is not a dignity in the Law; for if he had had the dignity by creation, and had been Lord of Parliament, he ſhould have been tryed by his Peers.

In ſuch a Triall *per pares*, the Lords ſhall not be ſworn, and every one ſhall give his Verdict by himſelf, and if the greater number agree, it is ſufficient. A Lord which is a Peer of the Realm ſhall not be tryed *per pares ſuos*, in an appeal, but in an Indictment at the ſuit of the King. *See Cook's 2d part of Inſtit. c. 29.*

It is a maxim in the Law, *Quod ibi ſemper fieri debet triatio, ubi juratores meliorem poſſunt habere notitiam.*

TALLAGIUM.

Tallagium, or *Tailagium*, cometh of the Freneh word (*Tayler*) to ſhare or cut in pieces, and per metaphoram is taken, when the King, or any other hath a ſhare or part of the value of a mans goods or chattells; or a ſhare or part of the annuall revenue of his Land, or puts any charge or burthen upon another; ſo as *Tallagium* is *de genere incluſive*, of Subſidies, Taxes, Tenths, Fifteenths, Impoſitions, and other burthens put, or ſet upon any man; and ſo it is expounded in our Year-Books, what ſhall be ſaid to be Tallage put upon the Subiect by the King unjuſtly. *Vide* 2 part of *Cook's Inſtit.* 533.

V.

VAGABOND.

Vagabond, is one that wandereth about, rogue and vagabond are all one, whosoever wandreth about idly and loyteringly is a rogue or vagabond, although he beggeth not.

VERDICT.

Verdict, *quasi verè dictum*, as the saying of truth.

VILLENAGE.

Villenage. A villain signifieth as much as *servus* among the Civilians. A man of servile or base degree, villain from the French villein, *a villa*, from a Countrey Farm, whereunto they were deputed to do service, as our villains regardant to Mannors, were *glebæ ascriptitii*, tied to the turf, or rather of the word *vilis*, of his vile and base condition.

Judge Doderidge English Lawyer.

Villenage is then the service of a Bondman, and yet a freeman may do the service of him that is bound, therefore Tenure in villenage is twofold.

One where the person of the Tenant is bound, and the Tenure servile, and the other where the person is free, and the Tenure servile.

Cook on Lit.

It is agreed by all men, that there were never any bondmen or villains, as the Law calleth them in *Kent*.

Lambert perambul. of Kent.

Villenage is where a man holdeth of his Lord, either

either by doing unto him some particular base service, and such an one is called a Tenant by villenage, or by doing generally whatsoever base service his Lord will command, and impose upon him, and such a Tenant is termed in our Law a villain. *Lit. lib. 2. cap. 10. sect. 12.*

VOID.

Void, A Church Representative may become void five manner of waies.

1. By death.
2. By creation. *Cook on Lit. p. 120.*
3. By resignation.
4. By deprivation.
5. By cession, as by taking a Benefice incompatible

VOUCHER.

Voucher, in Latin *vocatio*, or *advocatio*, is a word of art made of the verb *voco*, and is in the understanding of the Common Law.

When the common tenant calleth another into the Court that is bound to him to warranty, that is either to defend the right against the demandant, or to yeeld him other Land.

USURY.

Usury, *Usura dicitur ab usu & ære, quasi usu æra, id est, usus æris, & usura est commodum certum, quod propter usum rei mutuatæ accipitur.* *Cook 5 Rep. Claytons Case.*

The Statute now in force enacted, *Eliz. 13. c. 8.*

1. It alloweth not usury but punisheth the excess of it. *The Statute 21 of K. James, c. 17. forbids taking above 8 in the 100 that of Queen Eliz. above 10.*

2. The title of the act is an act against usury, how then is it for it?

3. It calleth usury a detestable sin, how then can it secure the conscience of any?

The

The Statute of *H.* the 8. punished all usury above ten in the hundred, with the forfeiture of treble value. See that of *Ed.* 6th.

UTLARY.

Utlary, The Bishops of *Durham* have had their Royalties and Princely rights, so that the goods of outlawed and attainted persons out of the Kings Protection, fall into their hands, and not into the Kings.

Cambden of Durham.

Utlagatus, *est quasi extra legem positus*, and *Bracton* saith, that *caput gerit lupinum*, because he might be put to death by any man, as a Wolf that hatefull beast might be.

Cook on Lit. l.2.c.11.

But in the beginning of the reign of King *Edward* the third, it was resolved by the Judges, for the avoiding of inhumanity, and of effusion of Christian blood, that it should not be lawfull for any man, but the Sheriff only (having a lawfull Warrant therefore) to put to death any man outlawed though it were for felony, and if he did, he should undergo such punishments, and pains of death, as if he had killed any other man, and so from thenceforth the Law continued untill this day.

Id. ib.

W.

VV.

VVAGE.

VV*Age*, is the giving ſecurity for the performing of any thing, as to wage Law, and to wage deliverance. Vadiare eſt dare pignus, pignore certare, *to put in a ſurety.* *Manſhew.* *cometh of the French* gager, id

Contra inſtrumentum, ſive ſpecialitatem (ut noſtri loquuntur) legis vadiatio locum non habet. Dyer *fol.* 23.

WAIF.

Waif, The Civilians call it *derelictum*, this belonged in times paſt to the finder, by the Law of nature, and now to the Prince by the Law of Nations, or to the Lord of the Fee which hath his liberty granted him by the King, if the owner ſhall challenge it within a year and a day, it ſhall be reſtored him. *Books tit Eſtray and waif.*

A thing *pro derelicto habita*, waived and forſaken, is *nullius in bonis*, as when a man for fear of a tempeſt caſteth his things into the Sea, or ſome danger being emminent, leaveth them upon the land, or elſe of his own free-will leaveth that which is his own *ſine ſpe rehabendi.* *A thing* dereliƈto, habita, *waived and forſaken, is* nullius in bonis.

If a thing be fallen out of a chariot or Wagon, it may be ſaid to be loſt or waived.

Felony is not committed in the taking of treſury found wreck of the Sea, waif and ſtray, and ſuch like, unleſs they have been before ſeiſed and 29 *E.* 3. 29 *E* 4,5,12.

and the reaſon is, *quia Dominus rerum non apparet, ideò cujus ſunt incertum eſt*, and therefore
12 E. 3. *Brief.* 678. puniſhment in ſuch caſes, is by fine, and not by the taking away of life and member.

Waif, is properly when a thief being purſued
Cook 5 *Rep. Foxleys caſe.* and having ſtolen goods about him, doth leave or forſake them, that he may fly away.

WAIVE.

Waive, is a woman that is outlawed, and ſhe is called waive, as left out or forſaken of the Law,
Cook on Lit. l. 2. *c.* 11. *ſect.* 186. and not an outlaw, as a man is, for women are not ſworn in Leets to the King as men are, which be of the age of twelve years or more.

WAPENTAKE.

Wapentake. When any on a certain day and place took upon him the Government of the Hundred, the free Suiters met him with Launces, and he deſcending from his Horſe, all roſe up to him, and he holding his Launce upright, all the reſt, in ſign of obedience, with their Launces touched his Launce or Weapon; for the Saxon word *wapen* is weapon, and *tack*, *tactus*, touching, whence *wapentake* or touching a weapon. *Cook's 2d part of Inſtit. c.* 10.

Wapentakia a *Wapen.* hoc eſt, armis: quæ quoties novus eſſet hundredi dominus, ei in ſubjectionis ſignum reddebant. Voſſius *Smiths Common wealth of England.*

It came of the Danes, or Saxons, for that ſo many Towns came by their order then to one place, where was taken a muſter of their armour and weapons, in which place from them that could not find ſufficient pledges for their good abearing, their weapons were taken away. Weapon, or wapon in old Engliſh do ſignifie all arms offenſive, as Sword, Dagger, Spear, Launce, Bill, Bows, Arrows.

De vitiis Sermonis *l.* 2. *c.* 9. *c.* 19.

The

The Northern Engliſh beyond *Trent*, called a Hundred ſo.

WARDSHIP.

Wardſhip, The finall cauſe why it was ordained was this, *ut qui per ætatem ſeipſos defendere nequeant, ab aliis defendantur.*

Of Guardianſhips there be two kinds in reſpect of the manner of their conſtitution, *viz.*

1. By the Common Law.
2. By Statute.

At the Common Law there are four manner of Guardians.

1. Guardian in Chivalry.
2. Guardian in Soccage.
3. Guardian by nature.
4. Guardian *pur cauſe de nurture.*

For Guardianſhip by the Statute, 1. and 2 *Phil.* and *Mar.*

All which ſeverall ſorts of Guardianſhips the Law hath defended by diversStatutes providing for the Guardians reſpective remedies, in caſe their rights are violated, *vid. Hub. Rep. Dr. Huſſeys caſe, Weſt.*2.*c.*35.explained for that purpoſe in a Writ of Raviſhment. 32 *Ed. Fitzh. guard.* 32. *&* *Fitzh. N. B.* 91. *&* 143. *&* *Regiſter* 98. *&* 99. 12 *H.*4. 16.

WARRANTY.

Warranty, is a Covenant whereby the Bargainer is bound to warrant the thing ſold to the Bargainee, and is either,

Warrantum eſt ſe, curitas à venditore præſtita emptori, quo tranquille aliquid poſſideat. Eaque a ſignificatione *warrantizare* dicitur warrantus five venditor, quando ſe empto obligat per acta curiæ aut chartam, aut contractus inſtrumentum. Voſſius De vitiis Sermonis. *l.*2.*c.* 20.

1. Reall,

1. Reall, or
2. Personall.
   1. Real, when it is annexed to Lands or Tenements granted for life, &c. and it is either,
      1. In deed, as by the word *warrantizo* expresly.
      2. Or in Law as by the word *dedi* or some other amplification.
   2. Or personall which either respects the
      1. Property, of the thing sold or
      2. The quality of it.

Reall warranty in respect of the estate is either

1. Lineall.
2. Collaterall, or
3. Commencing by desseisen.

WARREN.

It comes from the French word garein, *id est*, vivarium, *Dr. Cowell Instit.*

Warren, The King grants a Warren to me in mine own Lands for Pheasants and Partridges onely, so by this grant no man may there chase them without my Licence, and so of Hares, but not of Conies, for their property is to destroy the fruits of the earth, and to eat Corn, *Crompton Jurisd. fol.* 148.

Cook on Lit. p. 5.

By the grant of it, or a Forest or Park, not only the priviledge, but the Land it self passeth, for they are compound.

WASTE.

Brooks abr. tit. Chattels p. 135. B. *Cook on Lit. l.* 1. *c.* 4. *sect.* 67.

Waste. Brook holds that the Executors shall have glass, for the house (saith he) is perfect without it. Yet it was adjudged in the Common Pleas, that a waste may be committed in glass, annexed to the Windows, for it is parcell of the house, and shall descend as parcell of the Inheritance to the Heir, and Executors shall not have it, and although that

that the Leſſee himſelf at his own coſts put the glaſs in the Windows, yet this being own parcell of the houſe, he cannot take away this or waſte it, but ſhall be puniſhed in waſte. Glaſs annexed to the Windows by nails, or after other manner by the Leſſor or Leſſee, cannot be removed by the Leſſee, for without glaſs it is no perfect houſe, and by a Leaſe or grant of a houſe this ſhall paſs as parcell of it. and the Heir ſhall have it, and not the Executors, and peradventure a great part of the coſts of a houſe conſiſts of glaſs, and if they be open in a tempeſt and rain, waſte of the timber of the houſe will follow. Alſo it was reſolved, that if wainſcot be annexed to a houſe by the Leſſor or Leſſee, it is part of the houſe, and there is no difference in the Law whether it be faſtned with great or little nailes, or by ſcrews or irons put through poſts or walls. But if it be any of theſe waies, or any other fixed to the poſts or walls of the houſe, the Leſſee cannot remove this, but he is puniſhable in an action of waſte; for this is part of the Houſe, and by Leaſe, or grant of the houſe ſhall paſs as parcell.

And Rep. Harlekanders caſe. fol. 63, 64

By an Action of waſte at our Law, the Plaintiff, if it be found for him, ſhall recover treble damages.

Fitzh. Nat. Brev. 58 *H. Cook l.* 5. *Rep.*

For permiſſive waſte no Action lies againſt Tenant at will, but for voluntary waſte a generall Action of Treſpaſs lies.

Counnantes de *Salop. fol.* 13.

There are two kinds of waſte, *viz.* voluntary, or actual and permiſſive, waſte may be done in Houſes, by pulling or proſtrating them down, or

At the Common Law no remedy did lie for waſte, either voluntary or permiſſive, againſt Leſſee for life, or for years, becauſe the Leſſee had no intereſt in the Land, by the Act of the Leſſor, and it was the Leſſor his folly not to reſtrain the Leſſee by covenant or condition, Cook's 5 *Rep.*

by

by ſuffering the ſame to be uncovered, whereby the ſparrs or raſters, or other timber of the houſe are rotten. But if the houſe be uncovered, when the Tenant cometh in, it is no waſte in the Tenant to ſuffer the ſame to fall down. But though the houſe be ruinous at the Tenants coming in; yet if he pull it down, it is waſte, unleſs he re-edifie it again.

Though there be no timber growing upon the ground, yet the Tenant at his perill
Cook on Lit. l. 1. c. 7. ſect. 67. muſt keep the houſes from waſting. If the Tenant do, or ſuffer waſte to be done in houſes, yet if he repair them before any action brought, there lyeth no action of waſte againſt him; but he cannot plead *quòd non fecit vaſtum*, but the ſpeciall matter.

A wall uncovered when the Tenant cometh in,
Id. Ib. is no waſte, if it be ſuffered to decay. If the Tenant cut down, or deſtroy any fruit trees growing in the Garden or Orchard, it is no waſte. If the Tenant build a new houſe it is waſte, and if he ſuffer it to be waſted, it is a new waſte. Waſte properly is in Houſes, Gardens, in Timber trees, *viz.* Oak, Aſh, and Elme; either by cutting of them down, or topping of them, or doing any Act whereby the timber may decay.

If a houſe be ruinous at the time of the Leaſe made, if the Leſſee ſuffer the houſe to fall down,
Id. ib. he is not puniſhable, for he is not bound by Law to repair a houſe in that caſe: And if he cut down Timber upon the ground ſo letten, and repair it, he may well juſtifie it; and the reaſon is, becauſe the Law doth favour the ſupportation and maintenance of Houſes of habitation for mankind.

WIFE.

Wife. After Marriage, all the will of the Wife, in judgment of the Law is subject to the will of the Husband; and it is commonly said, *a feme covert hath no will.* *Cook 4 Rep. Forse and Hemblings case.*

If she have any Tenure at all, she holds *in Capite*, and she hath no title but by her Husband, the maxim of the Lawyers is *uxor fulget radiis mariti*, the Wife shines with her Husbands beams.

Where Baron and Feme commit felony, the Feme can neither be principall, nor accessary, because the Law intends her to have no will, in regard of her subjection and obedience she owes to her Husband.

Our Law saith, that every gift, grant, or disposition of goods, lands, or other thing whatsoever, made by a woman covert, and all, and every obligation and seoffment made by her, and recovery suffered, if they be done without her Husbands consent, are void. *45 Edw 3. Fitz. Coven 18. 1 H. 5. 12. 6. Perk. cap. de Grant. Nat. Brev. fol. 120.*

Yea, if she do wrong to another, she hath not any thing to make satisfaction during coverture, either her Husband must do it, or by imprisonment of her person must it be done. *Nat. Brev. fol. 188. 11.*

And though she have inheritance of her own, yet can she not grant any annuity of it during her coverture without her Husband; if any Deed be made to that purpose without his consent, or in her name alone, it is void in Law. Yea, if there be debate between the Husband and his Wife, whereby certain Lands of the Husbands be assigned to the Wife with his consent, if out of such Lands she grant an annuity to a stranger, the grant is void. *Perk. fol. 2. A* *Perk. fol. 2. B*

And if he covenant to give her yearly such and

27 *H.*8.27. *p.*12. such apparell, she cannot dispose it as she list without his consent, but only use and wear it herself.

Neither can she lease her own Land for years, for life; if she do, it is void, and the Lessee entring by force thereof, is a disseisor to the Husband and trespassor.

*Perk. f.*344

21 *H.*7.18 *p.*29. *Nat. Brev. f.*12. If she sell any thing, the sale is void, except she be a Merchant, where by the custom she is inabled to Merchandize.

Finally, she cannot make executors without the consent of her Husband, nor a devise or will. *Cook* 4 *Rep. Ognels case*

Plowd. Comment. 344 *a Bret. and Rigdons case.* If she make a Will, and thereby devise her own Inheritance; and her Husband die, and she after die without any new publication of it, it is of no force, but it was void at first.

Dr. and Stud. f. 13. *Plowd. Comment. fol.*418.8. Suppose a woman at the time of her marriage have a lease for years, or the wardship of the body and Lands of an Infant, or have it by gift or purchase, after marriage she cannot give it away whatsoever the extremity be, but her Husband may at any time during coverture dispose of it, and such his disposition shall cut off the wives interest.

12 *H.*7.22. *Cook* 5 *Rep. fol.*36. *H.*8. *Dyer fol.* 6. By the Common Law Marriage is a gift of all the Goods and Chattels personall of the Wife to her Husband; so that no kind of property in the same remaineth in her.

*Dr. and Stu. fol.*13. *Plowd. Comment. fol.*36. And all personall Goods and Chattels during Marriage given to the Wife, are presently *ipso facto* transferred (as to the property of them) to the Husband.

4 *H.*6.31. By our Law her necessary apparell is not hers in property. While she remaineth a Wife, she is (to use the Law phrase) under covert Baron: she can neither let, set, alien, give, nor otherwise

wise of right make any thing away.

WITHERNAM.

Withernam comes from two old and out-worn Saxon words, *Wither alterum & nam pignus quasi altera pignoris oblatio*: Some derive it of the German *Wider*, i. e. *Rursus* again, and *nam* that is, *captio*, a taking, *vetitum nanium*, in Latin, a forbidden taking, though it be a taking again, but because the first taking in distress was unlawfull, and so in Law forbidden. *Doderidge. See Smiths Commonwealth of England. l.3.c.10.*

WRECK.

Wreck, the *Civilians* call it *Naufragium*, nothing shall be *wreccum maris* but such goods only which are cast, or lest upon the Land by the Sea, for *wreccum maris significat illa bona quæ naufragio ad terram appellantur.* It is an estray upon the Sea coming to Land; as an estray of Beasts is upon the Land coming within any privileg'd place. *Cook 5 Rep. Sir Henry Constables case. Id. ib.*

The King, by the old custom of the Realm, as Lord of the narrow Sea, is bound to scour the Sea of Pyrats. And because that cannot be done without great charges, it is not unreasonable if he have such goods as be wrecked upon the Sea toward the charge. *Dr. and Stud.*

WRIT.

Writ, A Writ is a formall Letter, or Epistle of the King of the Liberties, *&c.* in a Parchment sealed with a Seal, directed to some Judge, Officer, Minister, or other subject, at their suit, or the suit or plaint of a subject, commanding or authorising some thing contained in the same Letter to be done for the cause briefly (and therefore called un brief) in that Letter expressed, which is to be discussed in some Court according to Law.

Writs are of three ſorts,

See Cook's 2d part of Inſtit. c. 24.

1. Originall, which are moſt commonly of courſe, and therefore are of a ſet form.

Of the ſeverall ſorts of Writs, and of the difference between a Writ and an Action.

2. Judiciall, which are for the Execution of the Judgment.

3. Magiſteriall, which vary in form according to the matter emergent.

WRONG.

Cook en Lit. l. 2. c. 1.

Wrong, or Injury is in French aptly called *Tort*, becauſe injury and wrong is wreſted or crooked, being contrary to that which is right and ſtraight. Injury is derived of *in* and *Jus*, becauſe it is contrary to right.

Cook preface to ſecond Rep.

Queen *Elizabeths* continuall charge to her Juſtices agreeable with her antient Laws was, that for no Commandement under the Great, or Privy Seal, Writs, or Letters, common right might be diſturbed or delayed, according to the antient Law declared by the great Charter, *Nulli vendemus aut negabimus aut differemus juſtitiam vel rectum.*

Y.

YARD-LAND.

YArd-land, or *Virgata terræ*, the Saxons called it Girdland, is a proportion of Land, in ſome Countries it is ten Acres, in ſome twenty, ſome twenty four, and ſome thirty Acres of Land. *Cook L.* 5

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FINIS.

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COMMENTARY:

OR,

An Illustration of the most Obvious and Useful words in the

LAVV.

With their Distinctions and divers Acceptations, as they are found as well in Reports Antient and Modern, as in Records, and Memorials never Printed: Usefull for all Young Students of the Law.

Arist. 3. Metaph. Cap 4.

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The second Edition Reviewed and Inlarged.

By *Edward Leigh* Gentleman, sometimes of the *Middle Temple*.

LONDON,

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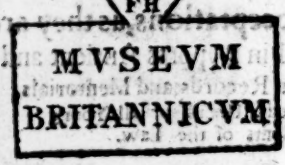
MVSEVM
BRITANNICVM

To the right Honourable
and his Honoured Kinſman
JOHN LISLE *Eſq;*
One of the Lords Comiſſioners of
the Great Seal of England.

My Lord,

IF Conſanguinity and long acquaintance, and Converſe together in three famous Societies, may be a ſufficient

ground for the Dedication of a Book to one; I hope, it will neither seem incongruous to others, nor be judged presumption by you, that I make choice of a Lawyer, and among them, of your self (one of such eminent place in reference to the Laws of the Land) to Patronize a Treatise of our Municipall Laws. I wish the Work were

as well worthy of your acceptance, as the application of my self to you is proper. *Lex humana* (saith Aquinas) *est quoddam dictamen rationis, quo diriguntur humani actus.* A humane Law is a certain dictate of reason by which humane acts are directed. The Law of this Land is held to be the best every way for this Nation, it being the birthright (as one of

1.2. Q. 97. Art. 1.

the great Sages of the Law saith) and the most antient and best Inheritance that the Subjects of this Realm have for by it they enjoy not only their Inheritance and Goods, in peace and quietness, but their Life and their most dear Country in safety. Among other principles of this Law are divers generall and particular Customes, *Cum enim alia*

Cooks preface to the 5 Rep. and on Lit.

quia

quid multoties fit (saith the Schoolman) *videtur ex deliberato judicio provenire, & secundum hoc consuetudo & habet vim legis, & legem abolet, & est legum interpretatrix.* For when any thing is done very often, it seems to proceed from deliberate Judgment, and according to this Custom both hath the force of a Law, and aboliſheth a Law, and is the in-

Aquinas leco prius citato Art. 3.

ter-

terpreter of Laws. Your Office is to moderate the rigour of the Law, to weigh what is generally meet, and for the person. Your Court is a Court of Equity or Conscience, as some call it. Let Conscience bear sway in all your publick and private Determinations: It is a Study well becoming a Christian Magistrate, to labour in all things

to

to approve his waies to God, *Acts* 24. 16. *Heb.* 13. 18. Lay out your self and your Abilities for him, before whose Barre the highest Judge on Earth must one day stand, and the higher our standing here is, the greater will the account be at the generall Audit. The consideration of which, I hope, will have an influence upon all your Sentences and Actions;

If

If you ſhall make it your VVork to exalt God, he will pour his Bleſſings abundantly both upon your ſelf, and whole Family, which ſhall be the deſire of

My Lord,

Your Affectionate

Kinſman and Servant,

Edward Leigh.

To the Candid READER.

Reader,

THere are three chief faculties, Law, Physick, and Divinity; the one respects the estate, the other the body, the third the soul. Every Englishman should labour for a competency of knowledg in all three; First of the Laws of the Land, that he may not (through the ignorance thereof) prejudice his estate; Secondly, of Physick, as the Proverb saith, Every man is a fool or a Physician; *that is, either knows what is good or hurtfull for his own body, or else is not so wise as he should be; Thirdly, of Divinity; a man may be a bad Christian notwithstanding this knowledg; but he can-*

cannot be a good Christian without it.

The study of the Law is multorum annorum opus, *and it must needs be the more difficult to attain unto perfection in it, since, though there be Inns of Court (Colledges as it were for Students in that Profession) yet the Law it self is not so well methodized (as other Sciences) nor are there Tutors or publick Teachers of the same, as of other Arts; but every Student is to acquire knowledg in it by his own industry: most of the Cases which he reads, are to be commited to memory.*

Qui sibimet discipulus est, stultum habet pro magistro.

Of all that have written systematically as it were by way of Institutes, Littleton *is most extolled, he being the* * *Ornament of the Common Law, and (as some say) the most perfect and absolute Work that ever was written in any humane Science; I have collected my Materials out of him and Sir* Edward Cook *upon him, and his Reports,* Perkins, Fitzherb. *Nat. Brevium,*

* *Cooks preface to the 10 Report, and Tookers case 2 Rep. Littleton is the true & surest Register of the fundaments and principles of our Law. Ployd. Comment. Wimbesh against Talbois.*

vium, Ployden, L. Dyer, Brooks *Abridgment*, Dr. *and* Student, *Terms of Law*, Cowels Interpreter, *and many others, some of which I quote in the Margin almost for every thing.*

And I hope that this little Treatise being in English, and digested into an Alphabeticall order, will be usefull for young Students in the Law, Justices of Peace, and other Countrey Gentlemen, whose benefit I especially intend in the publication of it. But least any should object (as perhaps some may) that I have nothing here but what is already in the Terms of Law, *and* Cowels Interpreter; *I shall intreat the Judicious, to compare what I have of the word Accessary, Actions, Appeal, in the letter* A. *with what is in them, and so likewise in any other Letter; (to instance in no more) and I doubt not but he will acknowledge, that there is difference enough between this and the others, though I do make use of them,*

as

as I do of divers other Authors.

This may suffice by way of Preface, I shall no longer detain thee from the Book, but wishing thee much good by these my labours, I rest,

Thy hearty well-wisher,

Edward Leigh.

Ab interpretatione ad nomen ipsum derivatum sicuti à genere ad speciem desumpta argumentatio est inanis, quod etymologia latius puteat quam nomen ipsum, certè in his Reciprocatio obscura & incerta est, maxime lege vernacula) sed à derivato ad derivationem argui longè melius potest, ut Tutor, ergo tueri debet, *&c.*

A Philologicall

COMMENTARY.

ABATE.

ABATE is both an Englisn and French word, and signifieth in his proper sense, to diminish, or take away; as one that abateth in Lands or Tenements, by his entry diminisheth and taketh away the Freehold in Law descended to the Heir; and so it is said to abate an accounr, signifying Substraction or withdrawing; and to abate the courage of a man. In another sense it signifies to prostrate, beat down, or overthrow; as to abate Castles, Houses, and the like; and to abate a Writ, is to destroy it, by pleading for them that makes it actious or not proper, and hereof cometh a word of Art, *Abatamentum*, which is an entry by interposition, after the death of the Ancestor and before the entry of the Heir. *Cook on Lit. l. 3. c. 8. sect. 475.*

ABBOT.

Abbot, in Latin *Abbas*, in French *Abbè*, is by skilfull Linguists said to come from the Syriack word *Abba Pater*, and in our common Law is used for him that in the Covent or fellowship of Canons, hath the rule and preheminence, he is called the head of the House, he is chosen from amongst the Monks and is one, as to all purposes as but in relation to the Corporation. *Cowels Interp.*

ABEIANCE.

In Abeiance i.e. *in expectation, of the French word* bayer *to expect, Cook on Lit. in potentia as the Logicians term it, in expectation or consideration of Law,* in nubibus, *in the Clouds. Cook on Lit. l.* 3. *c.* 1. *sect.* 646.

Abeiance, it seems to be derived from the French (*Abayer*) *i.e. allatrare*, to bark at, as Dogs do against a stranger, or Spaniels at a Feasant, put to the perks. So Children are said, *Bayer à la mamme*, when seeing the dug, they struggle and make means towards it. Our Antient Lawyers would signifie hereby a kind of hope or longing expectance, because that these things that be in *abeiance*, though for the present they be in no man, yet they are in hope and expectation belonging to him that is next to enjoy them.

When a Parson of a Church dyeth, we say that the Freehold is in *Abeiance*, because a Successour is in expectation to take it. If a Tenant for term of anothers life dyeth, the Freehold is said to be in *Abeiance*, untill the occupant entereth.) If a man make a Lease for life, the remainder to the right Heirs of *J. S.* the Fee-simple is in *Abeiance*, untill *J. S.* dyeth; because as long *J. S.* liveth, his Heirs are in himself, and he hath no Heirs to take by that name and purchase, and therefore during the life of *J. S.* this remainder is in the preservation of the Law, *in nubibus*, the Cloudes or Lap of the Law.

ACCESSARIE.

1. Before the offence or fact, is he that commandeth or procureth another to do Felony, and is not there present when the other doth it; but if he be present, then he is also a principal.
2. After the offence, is he that receiveth, favoureth, aideth, assisteth, or comforteth any man that hath done any murder, or felony, whereof he hath knowledg.

He which counselleth or commandeth any evil thing, shall be judged accessary to all that followeth of this evil act, but not of another distinct thing; as I command one to beat another, and he

he beat him so, that the other die of it; I shall be accessary to this murder, for it is a sequel of my commandement. But if I command one to steal a white Horse, and he steals a black one; or to burn such a house, which he well knoweth, and he burn the house of another: I shall not be accessary to this. So if I command one to rob such a Goldsmith of his plate in such a place, as he is going to *Sturbridge* Fair, and he break his house in *Cheap-side*, and then steal away his Plate; I shall not be accessary to this burglary, for this is another manner of Felony: But if I command one to kill one in the field, and he kill him in the City or Church; or I command him to kill him at such a day and he kill him at another day; I shall be accessary: for the killing is the substance, and the day, place, or weapon, is but circumstance. But if I command one to kill *John* a *S.* and before he hath kill'd him, I come and say, that I am penitent for my malice, and charge him not to kill him, and yet he kill him; I shall not be accessary. Where the principall is pardoned, or hath his Clergy, the Accessary cannot be arraigned; for the Maxime of the Law is, *Ubi non est principalis, non potest esse accessorius*, for it doth not appear by the judgment of the Law, that he was principall; but if the principall after attainder be pardoned, or hath his Clergy allowed him, there the accessary shall be arraigned, because it appeareth judicially that he was principall. Some have holden, that neither for felony nor maim, the Accessary shall be arraigned, till the attainder of the principals.

Plo. Com. Sanders case.

Cook 4. Rep. Cases of appeals and indict. Siers 43. B.

In the lowest and highest offences, there are no accessaries, but all are principals, as in Ryots, Routs, forcible Entries, and other Transgressions, *vi & armis*, which are the lowest offences; and so in the highest offence, which is *Crimen læsæ majestatis*,

Cook on Lit. l. 1. c. 8. sect. 71.

In alta proditione nullus potest esse accessorius, sed principalis solummodo. Fulb. præparat. 5. c. p. 43.

jestatis, there be no accessaries, but in Felony there are both before and after.

In the third of Queen *Mary* a maidservant conspired with a bad fellow to rob her Mistris, and in the night she opened the door, and brought the fellow to the bed of her Mistris, who did kill the Mistris, the maid holding the candle, but saying nothing; she was not a Principal, (though she was present at the act, and did concur with the murderer from the beginning to the end) but accessary, because opening of the door, and holding of the candle was not parcell of the consummation of the act. *Quære* if this be petty treason in the Maidservant, since it is but murder in the other, although she was present when her Mistris was murdered. Yet she cannot, as I take it, be a traytor else, the principal being but a murderer.

ACQUITTANCE.

Termes of Law.

Acquittance is a discharge in writing of a Summe of Money, or other duty which ought to be paid or done. This word differeth from those which in the civil Law be called *acceptilatio*, or *Apocha*, for the first of these may be by word, without writing, and is nothing but a feigned payment and discharge, though payment be not had. *Apocha* is a writing witnessing the payment or delivery of Money, which dischargeth not unless the Money be paid.

ACQUITER.

Cook on Lit. lib. 2. sect. 342.

Acquiter is compounded of *ad* and the old Verb *quietare*, and signifieth in Law to discharge or keep in quier, and to see that the Tenant be safely kept from any Entries or molestation, for any manner of service issuing out of the Land to any Lord that is above the Mesne, hereof cometh acquital *& quietus est*, i. e. he is discharged; and he that is discharged of a felony by judgment,

judgment, is said to be acquitted of the felony *acquietatus de felonia*, and if it be drawn in question again, he may plead *auter fois acquite*.

And acquitall is either in deed or in Law; acquitall in deed is either by verdict, or by battell, by verdict when by a Jury he is found not guilty of the offence whereof he is charged: by battell, as when in an appeal the plaintiff yeeldeth himself creant or vanquished in the field, the judgment shall be that the appelee shall go quit, and that he shall recover his damages. *Cook 2 Inſtit. 385.*

Acquital in Law is where two are indicted, the one as principall, the other as accessary, if the principall be acquitted indeed, the other shall not be tryed, but shall be call'd to be acquitted in Law of course, but if the principall be discharged for the insufficiency of the indictment against him or have his Clergy the accessary is not acquitted.

ACRE.

Acre, is a certain parcell of Land that containeth in length 40 perches, and in bredth four perches, it comes from the Germane word (*Acker*) *id est, ager*. *Acra olim incerta nunc verò certa per Statut. 31. Ed. 1.*

ACTION.

Action, an action is a right of prosecuting in judgment of a thing which is due unto any one. Actio est jus prosequendi in judicio, quod alicui debetur.

It may well be called an Action, *quia agitur de injuria*, for it is a complaint of an injury received.

ACTIONS are

1. Personall, whereby a man claimeth Debt or other Goods and Chattels, or Damage for them, or Damages for wrong done to his person, it is properly that which in Civil Law is called *actio in personam*. *Ratione objecti circa quod versatur.*
2. Reall, whereby the Demandant claimeth

title to have a Freehold in any Lands, or Tenements, Rents, or Commons in Fee-simple, Fee-tail, or for term of life.

3. Mixt, whereby something in the reallity is recovered, and damages also, as in assize.

Actio personalis moritur cum persona. This rule is not generally to be admitted, but only in such Cases where the wrong did principally and immediately rest upon a mans person, as if one scandalize or beat another, if either party dy the action is gone, but an Executor may have a Writ of Covenant, which is a thing meerly personall, or any Action upon the Case, as the Case is.

41. *Ass. pl.* 25. *Fitzh. ex.* 74. *Co. l.* 9. *fol.* 87. *a. Fulb. paral. second par. second dial.* & alii.

An Action upon the Case (called by the Civilions, *Actio injuriarum*) is so termed in the Common Law, because every mans Case must be in the Action, specially, and at large set down; for in that Action, the writ ought to comprehend the special matter, as well as the Declaration.

Fulb. paral. second part second dial.

If a man deliver a horse to one to keep him safely, the Defendant *equum illum tam negligenter custodivit, ut ob defectum bonæ custodiæ interiit.* So I trust my Shepherd with my sheep, and they perish through his negligence, an Action of the Case lieth here.

Cook 5. *Rep.*

An Action upon the Case doth not ly at the Common Law for calling a man heretick, or adulterer, but in the Spiritual Law, for those of the Common Law cannot discusse what is Heresie, or Adultery, but for calling one Traitor or Felon an Action lieth at the common Law.

Cook 4. *Rep. actions upon slander.* 5. *Rep. Sepcots Case.*

If a Smith prick my Horse with a nail, I shall

Brooks Abri. fol. 4. *Brook ubi supra. Fitz. Herbert. in Natura Brev.* *hath the same, and gives this reason, because it is the duty of every Artificer to do his Art duly and truly as he ought.*

have

have an Action of the Case, and so likewise if he warrant to cure my Horse and doth not; but if he do what he can, and not warrant the curing of him, it will not lie.

If one charge another that he hath forsworn himself, this is not actionable, because he may be forsworn in usuall communication, *quia benignior sententia in verbis generalibus seu dubiis est præferenda* 2. It is an usuall word of passion and choler to say that another hath forsworn himself, as if one say to another, that he is a villain, rogue, or varlet, *vel similia*, these will not bear an action, for *boni judicis est lites dirimere*, but if one say to another that he is perjured, or that he hath forsworn himself in such an action, in such a Court, for such words an Action may be maintainable, for here it appeareth that he hath forsworn himself in a judicial proceeding. So if a man say, that another is main sworn, a word in the North for perjured, or in Welsh call a man an Idoner, which is to the same purpose, an Action will lie. *Cook 4. Rep. Actions for slander. Hob Rep. fol. 126.*

In every Action upon the Case for slanderous words, two things are required. 1. That the person which is scandalized be certain. If one say one of the servants of *John* a *S.* is a notorious thief, he having divers, these words will not bear an Action for their uncertainty. 2. That the scandall be apparent by the words themselves; and therefore if the Defendant say to the Plaintiff, that he is full of the Pox, it shall be taken to be the Small Pox, though the Plaintiff declares with an *innuendo*, the French Pox, for words shall be taken in *meliore sensu*, where they may be applied two waies. *Cook ubi supra.*

If one say to *J.S.* Thou art a Traytor, here *constat de persona*, and the Action lieth; or if one scandalize a man in his Profession or Trade, by which he gets his living: as *Skinner* a Merchant, *Cook 4. Rep. actiones de scandalis.*

said of *Manwood* chief Baron, That he was a corrupt Judg, and it was adiudged that these words were actionable. *Popham* saith, If one say of a woman that keeps an Inn, that she hath a great infectious disease, by which she loseth her guests, she shall have an action upon the Case.

If one say of a Merchant, that he is a Bankrupt knave, an action lies, or that he will be a Bankrupt in two days, which imports onely an inclination; yet an action lies. If one call another thief or traytor generally the action will lie, but if one say, Thou art a thief, for thou hast robbed my Orchard; or, for thou hast robbed my Hop-ground; these words are not actionable, for the last words prove it to be no Felony, and so qualifie the proper sense of this word Thief.

If the Goaler of malice fore thoughr, lay so many irons on the prisoner, as to lame him, he shall have his Action on the Case. If a man play with others at Dice, and he hath false Dice, with which he playeth and winneth the others money; he which hath lost his money, may have his action on the Case for this deceit. An action of trespass upon the case lieth against the keeper of a common Inn, if goods be imbezeled *infra hospitium*. If a man sell a Horse to another, and warrant him to be good, and the Horse hath some secret disease in his body which he knoweth of; the other shall have a writ of trespass on the Case against him. So if one sell Wine, and warrant it to be good, and it is naught, an action of the Case will lie.

Fitz. Herb. Nat. brev. Action upon the Case. Cook 8. fol. 32. Calyes Case. Id. ib.

If a mans servant be beaten, the Master shall not not have an action for this Battery, unless it be to great, that by reason thereof, he loseth the service of his servant; but the servant himself shall have an action for every petty battery, *Cook 9. Rep. Morys Case.*

The Master hath no damage by personall battery of his servant.

AD-

ADJOURNMENT.

Adjournment, is when any Court is put off, and assigned to be kept again at another place or time.

ADMISSION.

Admission, is when one that hath right to present to a Church being void, doth present him to the Bishop of the Diocess in which the Church is, who upon examination finding him *idoneus persona* that is capable and able, doth consent that he shall be Parson, and saith *admitto te habilem.*

ADMINISTRATOR.

Administrator, is he to whom the ordinary (*id est*) the Bishop doth commit or give power to dispose and administer the goods, and Chattels within his Diocess belonging to any person that is dead, without Executor for the benefit of such persons, or if the Party make a Will and Executor and they all refuse, or the Executor be within the age of 17 years. *Cook 5. fol. 29. Piggots case.*

Administrator *durante minore ætate*, cannot sell any of the goods of the dead, unless it be of necessity for the payment of debts, or *bona peritura*; for he hath his office of administration *pro bono & commodo* of the Infant, and not for his prejudice. The words of such Letters are, *Administrationem omnium & singulorum bonorum ad opus, commodum, & utilitatem executrie. durante sua minore ætate & non aliter, nec alio modo committimus*; such administration ceaseth at the age of seventeen of the Infant. Where one hath goods onely in an inferiour Diocess, yet the Metropolitan of the same Province, pretending that he had *bona notabilia* in divers Diocesses, commits administration, this administration is not void, but voidable by sentence, because the Metropolitane hath jurisdiction over all the Diocesses within his Province, but if an *Cook 5. Rep Princes Case.*

an Ordinary of a Dioceſſe commit adminiſtration of goods, when the Party hath *bona not abilia* in divers Dioceſſes, ſuch anminiſtration is meerly void, both for the goods in his Dioceſſe, and elſewhere, becauſe that by no means he can have juriſdiction of the Cauſe.

ADVOWSON.

Cook on Lit. l. 2. ſect. 180.

Advowſon of a Church is the right of Preſentation or Collation to the Church, *Advocatio*, ſo called, becauſe the right of preſenting to the Church was firſt gained by ſuch as were Founders, Benefactors or Maintainers of the Church, *viz.* 1. *ratione fundationis*, as where the Anceſtor was Founder of the Church, or 2. *ratione donationis*, where he endowed the Church, or 3. *ratione fundi*, as where he gave the ſoil whereupon the Church was built, and therefore they were called *advocati*, and thereupon the advowſon is called *jus patronatus*.

In an Advowſon or Rectorſhip, there are three diſtinct Rights, *viz.*

1. *Jus preſentationis*, which doth belong to the Patron.
2. *Jus Ordinationis* to the ordinary.
3. *Jus poſſeſſionis*, to the Parſon imparſonee.

Cook on Littelton l. 3. c. 13. ſect. 722.

If a man ſeized of an Advowſon in Fee, by his Deed granteth the next Preſentation to *A.* and before the Church becometh void, by another Deed grant the next Preſentation of the ſame Church to *B.* the ſecond grant is void; for *A.* had the ſame granted to him before, and the Grantee ſhall not have the ſecond avoidance by conſtruction. This hath been reſolved by the Juſtices.

AFFEERORS.

* *Affeerors* are ſuch as are appointed in Court-leets, to mulct ſuch as have committed any fault, which

* *It comes of an old French word* effeuer. i.e. *to tax or fine* Minſh.

which is arbitrably punishable, and for which no expreſs penalty is preſcribed by Statute.

The amerciament is the act of the Court, and the affeerement the act of the Jury, *Cook* lib.8. *Greiſlies* caſe, *fol.*40.*B.*

AFFRAY.

Affray is derived of the French *Affrayer*, which ſignifieth to terrifie. It may be without word or blow given, as if a man ſhould ſhew himſelf furniſhed with Armour or Weapon which is not uſually worn, it will ſtrike a fear into others that be not armed, as he is: for which reaſon it is a common wrong and inquirable in a Leet, which makes it differ from aſſault, which is alwaies a particular injury. 4 *H.*6. 10. 8.*Ed.* 4. 5.

AGE.

There are diverſity of Ages, which the Law takes notice of.

A Woman hath ſeven Ages for ſeveral purpoſes, appointed to her by Law, as ſeven years for the Lord to have aid *pour file marier*, nine years to deſerve dower, twelve years to conſent to marriage, until fourteen years to be in ward, 14 years to be out of ward, if ſhe attained thereunto in the life of her Anceſtor, ſixteen years to tender her marriage, if ſhe were under the age of fourteen at the death of her Anceſtor. and twenty one years to alienate her Lands, Goods, and Chattels. *Cook on Lit. l.*2.*c.*4. *ſect.*103. *Lit. Ten. tit. Dower & l.* 2.*c.*4.*p.* 22. *Cook on Lit.* ubi ſupra.

A man alſo by the Law for ſeveral purpoſes hath divers Ages aſſigned unto him; *viz.* twelve years to take the Oath of Allegiance in the Leet, 14 years to conſent to marriage, and for the Heir in ſoccage to chooſe his Guardian, and fourteen years is alſo accounted his Age of diſcretion, fifteen years for the Lord to have *aide pour faire* *Fitz. Herb. Nat. Brev. in brevi de rationabili auxilio. Lit. Ten.*

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fitz Chivaler, under 21 to be in ward to the Lord by Knights ſervice, under 14 to be in ward to a Guardian in ſoccage, and 21 to be out of ward of a Guardian in Chivalry, and to alien his Lands, Goods and Chattels. Before the age of twenty one years, a Man or a Woman is called an Infant. Full age regularly is twenty one years for man or woman to enable them to ſeal any Bond or any Deed whatſoever; a man cannot lawfully be impannelled in a Jury before that age, and at 17 years he may adminiſter as Executor.

Cook on Lit. l.3.c.1. ſect.259. Lit.Ten.l.2. c.4.p.22 & l.3.c.1.p. 56,57.

AGREEMENT.

Agreement (ſaith *Plowden*) is a word compounded of two words, *aggregatio & mentium*, *i. e.* agreement of mindes, it is a conſent of mindes in ſomething done or to be done, *ab aggrediendo dicitur*, ſaith *Spelman*.

Plowden Term.Paſc. anno 4. E. 6.

Reniger against Fogaſſa.

If I ſell all my Corn for Twelve pence every Buſhell, notwithſtanding the uncertainty of the quantity of the Corn, and of the ſumme for it, yet this is a good agreement.

Fitz. Nat. Allio the C Cook 32. Caſe Rd. il

Plowden ib.

So where one lets a Cloſe, rendring Twelve pence of Rent for every Acre, notwithſtanding the uncertainty of the Rent, yet it is a good agreement, for it may be reduced to a certainty, by meaſuring of the Corn or ground.

ALIEN.

Alien, is derived from the Latine word *alienus*, and according to the Etymology of the word, it ſignifies one born in a ſtrange countrey, under the obedience of a ſtrange Prince.

Alienæ gentis or alienæ ligeantiæ. *Cook on Lit.*

Such an one is not capable of inheritance within *England*.

1. Becauſe the Secrets of the Realm may thus be diſcovered.
2. The Revenues of the Realm (which are the ſinews

sinews of Warre, and ornament of Peace) shall be taken, and enjoyed by strangers born.

3. This will tend to the destruction of the Realm. *Cook l. 7. Rep. Calv. Case.*

He cannot have any reall or personall action concerning Land, unless he be an alien Merchant friend, and then he may have a Lease for years, of Houses, Warehouses, and Conveniences for habitation and Merchandizing, and if he be disturbed in the possession of them, he may maintain actions of trespass. And if he be naturalized by Act of Parliament, then he is not accounted in Law *alienigena*, but *indigena*, as a natural born Subject, and may purchase and maintain actions as Englishmen.

ALMS.

Alms, and relief of poor people, being a work of charity, is accounted in Law Divine Service, for what herein is done to the poor for Gods sake, is done to God himself. *Cook on Lit.*

If it were ordained that no Alms should be given for no necessity, this Custom and Statute were void, because no generall Custom or Statute must be directly against the Law of God. Nevertheless, the Statute in the 24 year of King *Ed.*3. whereby it is ordained, That no man under pain of imprisonment, shall give any alms to any vagrant beggers that may well labour, that they may so be compelled to labour for their living, is a good Statute, for it observeth the intent of the Law of God. Jura naturalia jure civili dirimi non possunt. *D. and Student.*

AMERCIAMENT.

Amerciament in Latine is called *misericordia*, because it ought to be assessed mercifully, and this ought to be moderated by affeerement of his equals, *Cook on Lit. lib.* 2. c. 11. p. 194.

quals, or else a Writ *de moderata misericordia* doth lie, or because the party which offendeth putteth himself on the mercy of the KING.

Term. of Law. *Cook 8. Rep.*

A fine is alwaies imposed and assessed by the Court, but Amerciament by the Countrey.

ANCESTOR.

Ancestor is derived of the Latine word *antecessor*, and in law there is a difference between antecessor and predecessor, for antecessor is applied to a naturall person, as *I. S. & antecessores sui*; but predecessor is applied to a body Politique, or Corporate, as *Episc. Lond. & predecessores. Sui Rector de D. & predecessores sui.*

Cook on Lit. l. 2. c. 4. sect. 103.

AN, JOUR.

An, jour, The law in many cases hath limited a year and a day to be a legall and convenient time for many purposes. The Wife or Heir hath a year and a day, to bring an appeal of death. If a man be wounded or poysoned, and dieth thereof within the year and the day, it is Felony. A Protection shall be allowed but for a year and a day, and no longer: a year and a day to remain in antient demesne to enfranchise a Villain.

Cook on Lit. l. 3. c. 7. sect. 422.

Fitz. Nat. Actio the C. Cook 32. Case: Jd. it

An jour, and *waste*, is a forfeiture when a man hath committed petty treason or felony, and hath lands which he holdeth of some common person, the King in detestation of the crime, might by his Prerogative cause the trees to be digged up, the houses to be rased and pull'd down, and the pastures and meadows to be plowed up: but the lands so defaced were to escheate to the Lord, and the King had no other benefit then before, but for the good of the Common-wealth it was provided by *Magna Charta*, Chap. 22. that instead of such spoil, the King should have the lands of such felon for a year and a day, and afterwards the Lord to

Cook 2 Institut. 37.

o have it without ſuch ſpoil. This Statute of *Prerogativa Regis*, made in the 47 year of *E.2.* is thought by *Stamford* and others to be in force as to this point, and hath made them conceive erroneouſly, but that Statute being repealed by an Act in 42 *E.3 cap.1.* the Act of *Magna Charta*, as to this is ſtill in force. The King ſhall not have *annum diem, & vaſtum* of lands holden in Gavel-kind, where the Father is hanged: but if he be outlawed and abjured for felony, he ſhall. Some hold that the cuſtom of *Kent, The Father to the Bow, the Son to the Plow*, muſt be taken ſtrictly; for if he be attainted and die in priſon, his lands ſhall eſcheat. If one be arreſted for felony, and breaks the arreſt; ſo that in purſuit of him he is killed, becauſe he would not otherwiſe be taken; the King in this caſe ſhall have the year, day, and waſte. *Id ib.*

ANNATES.

Annates, ſeemeth to be all one with firſt-fruits, becauſe the rate of the firſt-fruits paid of ſpirituall things is after one years profit.

ANNUITY.

Annuity, is a yearly payment of a certain ſum of money granted to another in fee for life or years, charging the perſon of the grantor onely. *Cook on Lit.144.*

For it, no action lieth, but onely a Writ of Annuity againſt the grantor or his heirs, if the grantor grant for him and his heirs. *Fitz.Herb. Nat. brev. p.152.*

If one grant to another an annuity *pro conſilio impendendo*; if he will not give counſell, the other may ſtay the annuity, becauſe he cannot have the thing, for which he grants the annuity; It is a conditionall grant, though there be not any word of a condition. *Ployd.a.1. 6. treſp. by Browning againſt Beſtor.*

If one grant to one learned in the Law, or in Phyſick, an annuity for terme of the life of the Grantee